

GILDED CAGE IN AN OCEAN PARADISE;

Sri Lankan Labour Migration to the Maldives



Miyuru Gunasinghe

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Dedicated to Rizana Nafeek

Sri Lankan migrant woman domestic worker and victim of human trafficking
Born on 04 February 1988; judicially executed in Saudi Arabia on 09 January 2013
at the age of 24

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1. Introduction

International labour migration is growing at an unprecedented tempo and governments of countries of origin and destination are struggling to regulate the recruitment and employment of migrant workers whilst ensuring the protection of their human rights. In 2010, the total number of international migrants in the world was estimated at 214 million people – an increase of 23 million from a total of 191 million in 2005.¹ Estimates for internal migration or migration within a country are around 740 million (UNDP, 2009). Globally therefore, around a billion people or approximately one in seven of the world's population are migrants with the actual figures perhaps even higher. Global remittances for 2012 reached an estimated US\$ 401 billion.² For South Asia, remittances in 2012 are expected to total \$109 billion in 2012³ and countries have become increasingly dependent on migrant remittances for socio-economic growth and development and there is growing dialogue to link migration to the post-2015 agenda for development.

There are a multitude of factors which give rise to global trends in migration which are equally applicable as causes of or incentives for labour migration: economic factors - growing disparities in living standards between countries; governance and public services - lack of political freedoms, corruption and poor welfare and public services; demographic imbalances – imbalances in labour supply and demand between developed and developing countries, and even between developing countries; conflict – in 2012 the estimated number of refugees was 10 million with internally displaced persons (IDP) numbering 28.8 million; environmental factors – there is a growing number of people migrating due to deteriorating environmental conditions; transnational networks – migrant communities in destination countries act as 'pull factors' especially for family members of migrants.⁴ The impacts of such mass economic migration can be analyzed at macro-economic levels of: poverty reduction; trade and balance of payment effects; labour market effects; savings, investment and economic growth; as well as micro-economic impacts of consumption patterns and livelihood development of households.⁵

However, most countries of origin and destination especially those in South Asia, Africa and the Middle East have insufficient mechanisms for ensuring the protection of the rights of migrant workers and their families and migrant workers are increasingly subjected to trafficking and forced labour conditions. Global numbers of trafficked persons were 12.3 million for 2010 (U.S. Department of State, Trafficking in Persons Report 2010). The Trafficking in Persons Report for 2013 reports that of 27 million men, women and children estimated by social scientists to be victims of trafficking at any given time, but only 40,000 have been identified by relevant countries during the reporting period.

¹International Organization for Migration (IOM), World Migration Report 2011; Communicating Effectively about Migration, 2011, Geneva, http://publications.iom.int/bookstore/free/WMR2011_English.pdf#page=74&zoom=auto,0,753

²Migration and Development Brief 20, Migration and Remittances Unit, Development Prospects Group, World Bank, 19 April 2013, <http://siteresources.worldbank.org/INTPROSPECTS/Resources/334934-1288990760745/MigrationDevelopmentBrief20.pdf>

³'Developing countries to receive over US\$400 billion in remittances in 2012, says World Bank Report', The World Bank, 20 November 2012, <http://www.worldbank.org/en/news/press-release/2012/11/20/developing-countries-to-receive-over-400-billion-remittances-2012-world-bank-report>

⁴World Migration Report 2013 – Migrant Wellbeing and Development, International Organization for Migration (IOM), Geneva, 2013, p.34-35, http://publications.iom.int/bookstore/free/WMR2013_EN.pdf

⁵'Migration, Remittances and Development in South Asia', Ed. By Saman Kelegama, 2011, Institute of Policy Studies, p.11, Sage Publications, India

While most countries in South Asia are countries of origin, India and the Maldives are host to relatively large numbers of incoming migrant workers with the Maldives hosting over a hundred thousand expatriate workers. The Maldives faces an unusual phenomenon in which, even as it experiences a noticeable increase in unemployment of its own citizens, it remains a country of destination to many South Asian migrant workers with a total of over 111,579 (Dept of Immigration, 2013) expatriates across approximately 200 inhabited islands in the Maldives. An estimated 44,000 undocumented workers are also reported to be in the economy. With a total population of approximately 330,000 Maldivians, the expatriate community is equivalent to approximately one third of the population. The prime draw for these migrant workers is the boom in the Maldivian tourism industry which contributed 28% to the GDP of Maldivian Rufiyaa (MVR) Million 21,160 in 2012.⁶ The Maldives however is facing increasing issues of human trafficking particularly relating to fraudulent recruitment practices and issues of forced labour conditions upon arrival and has been placed in Tier 2 for the fourth consecutive year by the US State Department in its Trafficking of Persons Report 2013.

The Sri Lankan economy is heavily dependent on migrant worker remittances especially from Gulf Cooperation Council countries in the Middle East which amounted to US\$ 6 billion in 2012 and was the highest source of net foreign exchange earnings in the country. There are over two million temporary Sri Lankan migrant workers with an annual outflow of over 250,000 workers, the majority departing to the Middle East. The Sri Lanka Bureau of Foreign Employment (SLBFE) is the primary regulatory body for international labour migration in the country and operates under the purview of the Ministry of Foreign Employment Promotion and Welfare (MFEPW). Between 2007 and 2012 an annual average of nearly four thousand Sri Lankans have migrated for temporary labour to the Maldives with a total of 14,359 documented Sri Lankans presently working in the Maldives.⁷ This research analyses labour migration flows from Sri Lanka to the Maldives for employment within the tourism industry of the Maldives, with an overview of Sri Lankan resorts in the Maldives. The significance of labour migration to the national economies of both countries, general and country specific issues of labour migration processes, rights of migrant workers within international and national legislation and institutions pertaining to labour migration, remedial state mechanisms available to migrant workers in the Maldives, and trade unionism in the tourism sector of the Maldives are also discussed in detail and recommendations given to relevant stakeholders in Sri Lanka and the Maldives.

2. Methodology

The research was carried out through a combination of desk research and information gathered through interviews with government officials in Sri Lanka and the Maldives, interviews with returnee Sri Lankan migrant workers and those employed in resorts and other professions in the Maldives, interviews with civil society in the Maldives, interviews with trade unions in the Maldives and Sri Lanka, dialogue with hotel management in the Maldives.

Limitations: The main limitation of this research was the difficulty in accessing Sri Lankan migrant workers based in resorts in the Maldives. Lack of access by local Maldivian trade unions to expatriate workers was highlighted within this limitation.

⁷Monthly Economic Review, Maldivian Monetary Authority, February 2013, <http://www.mma.gov.mv/mmr/mar13.pdf>

⁸Active Work Visa Count by Nationality, 9 January 2013, Department of Immigration and Emigration, Maldives

3. Maldives as a destination country: changing trends in Sri Lankan labour migration to the Maldives

Sri Lanka and the Maldives have been bound together for centuries by cordial economic and cultural relations and were colonized by the same Western powers, although not in the same

NATIONAL ACCOUNTS	2010	2011	2012
GDP (at2003 constant prices)		(Est)	(prov.)
GDP (million US\$)	1,493	1,599	1,653
Annual Growth Rate	7.1	7.0	3.4
GDP per Capital (US\$)	3,794	3,934	3,936
GDP (at current market prices)			
GDP (million US\$)	2,134	2,132	2,215
Published in December 2012			
BALANCE OF PAYMENTS	2009	2010	2011
(In million US\$)	(Rev.)	(Rev.)	(Rev Est.)
Balance on Goods	-912.7	-1044.3	-1378.9
Goods: Credit	169.0	197.5	346.4
Goods: Debit	-1081.7	-1241.8	-1725.3
Balance on Services	1036	1358.8	1441
Balance on current transfers	-179.5	-199.1	-218.8
Financial Account	196.3	19.5	61
Reserves	-20.4	-89.2	15.3
Current account	-333.9	-207.2	-490.1
Current account (percent of GDP)	-22.4	-13.0	-218.8
Financial Account	196.3	19.5	-29.6
Figures for 2009 & 2010 are revised & 2011 are revised estimates of December 2012			
FINANCE	2010	2011	2012
(In million US\$)		(Rev.)	(Bud)
Total Revenue and Grants	509	592.5	592.5
Total Revenue	497.5	583.0	583.0
Grants	12.0	9.5	9.5
Total expenditure & net lending	841.6	809.3	809.3
Recurrent	655.9	646.2	646.2
Capital	199.9	176.8	176.8
Net Lending	-14.1	-13.7	-13.7
Overall Deficit	-332.1	-238.5	-240.2
Overall Deficit (percent of GDP)	-15.6%	-11.2%	-10.8%
Debt Service Ratio	2.5	2.8	na

context or capacity. Sri Lanka or Ceylon during colonial periods was a key market for the Maldivian trade in dried fish and exchange of other goods and services with Ceylonese traders. Archeological findings appear to confirm that Buddhism was the religion of the Maldives before the conversion to Islam in 1153 A.D.⁸ Further, linguistic evidence shows a close relationship between Dhivehi and Sinhala both languages having evolved from the same Proto-Dhivehi-Sinhala⁹ and marked similarities in language still prevail. It is therefore easily understandable that migration of people between the two countries should be a naturally occurring phenomenon.

There has continued to be a historical trend of temporary migration of Maldivian citizens to obtain higher education, trade in goods and services and find employment in Sri Lanka whilst small numbers of Sri Lankan professionals and skilled workers sought employment especially in the financial sector in Male.

Table 1: National Accounts of the Maldives (Dept of National Planning)

The phenomenon of mass migration for labour from Sri Lanka to the Maldives is however a relatively new trend and is primarily the outcome of economic growth witnessed in the Maldives after 2005, an increase in rebuilding and construction activities after the devastation caused by the Tsunami in 2004, augmented foreign direct investment in the export fishing industry, and rapid development of the hospitality sector through an increase in foreign investment and government initiatives to promote the tourism industry. This demand for expatriate labour has corresponded with a general increase in outbound labour migration from Sri Lanka especially to countries in the Middle East. Many Sri Lankans find the Maldives an attractive option due to the proximity of location, certain similarities in culture and common context of the tourism industries of the two

⁸Mohamed, N. Pre-Islamic Maldives, National Center for Linguistic and Historical Research, Maldives, <http://www.qaumiiyyath.gov.mv/docs/whitepapers/history/Pre-Islamic%20Maldives.pdf>

¹⁰Cain, B.D. 2000. Dhivehi (Maldivian): A Synchronic and Diachronic Study. Ph.D.Dissertation, Cornell University

countries which make Sri Lankans well equipped to serve in a similar capacity in the Maldives. The monetary policy of the Maldives which keeps the Rufia pegged to the US dollar at a higher rate makes employment in the Maldives a more lucrative option.

Maldives at a glance: a socio-economic overview of the Maldives

A brief overview of the socio-economic background of the Maldives will be undertaken to enable a better understanding of the country situation, the contextual importance of the tourism sector and the full impact of labour migration on the Maldivian economy.

The Maldives is spread over a land mass of 26 coral Atolls, consisting of 1,190 low lying islands which lie 482 km from the Indian subcontinent. The land mass of the Maldives is less than one percent of the country's sovereign territory of 90,000km². For development and administrative purposes, the country is divided into seven provinces. The total population of the Maldives for 2012 is estimated to be approximately 330,000 but according to the Census of 2006¹⁰ the Maldives population is around 298,986 with a total male population of 151,459 (50.66%) and total female population of 147,509 (49.34%).¹¹ Of this population, over 119,000 live in the capital city of Male' with around 200 other inhabited islands having small populations of 500 or more on each island.¹²

The Gross Domestic Product (GDP) of the Maldives has grown from MVR Million 12,489 in 2005 to MVR Million 21,160 in 2012.¹³ A fundamental reason for this growth is the boom in the tourism industry since 2006. The Maldives has experienced an average GDP growth of between 6%–8% per year over the last decade. In 2005 Maldives saw a negative economic growth rate of (-)5.5% but bounced back strongly in 2006 with a real economic growth of 19%. The Maldives has subsistence agriculture in native crops such as coconuts and fruits but lack other land-based natural resources of minerals or oil. Traditionally, the fisheries sector was the main contributor to the Maldivian GDP but now amounts to a mere 1.7 percent of GDP in 2012 and an estimated 1.6 percent for 2013.¹⁴

¹¹Census was carried out across 194 administrative islands, 88 resort islands, 34 industrial and other islands.

¹¹Annual Statistical Year Book 2012, Department of National Planning, <http://planning.gov.mv/yearbook2012/yearbook/Population/3.1.htm>

¹²Maldives Monetary Authority, Overview of the Maldivian Economy, <http://www.mma.gov.mv/stat.php>

¹³Annual Statistical Year Book 2012, Department of National Planning, <http://planning.gov.mv/yearbook2012/yearbook/National%20Accounts/16.1.htm>

¹⁴Annual Statistical Year Book 2012, Department of National Planning, <http://planning.gov.mv/yearbook2012/yearbook/National%20Accounts/16.6.htm>

Table 2; Gross Domestic Product (at constant prices) by kind of activity 2003-2012

	ISIC Industry / Economy Activity	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
	GDP at basic price	12,158.3	13,675.8	12,489.4	14,935.5	16,512.2	18,526	17,853.0	19,113.2	20,351.0	20,529.6
	Primary	727.4	742.3	786.2	820.8	722.9	698.3	681.1	675.2	682.3	682.0
A&C	Agriculture & mining	314.5	327.7	300.1	331.4	341.4	344.8	336.9	350.6	361.2	363.2
B	Fisheries	412.9	414.5	486.1	489.4	381.5	353.5	344.3	324.6	321.0	318.8
	Secondary	1,680.6	2,203.1	2,431.0	2,680.3	3,284.8	3,597.4	2,657.4	2,771.5	3,107.8	3,143.0
D	Manufacturing	716.6	824.4	793.1	849.3	894.1	1,016.5	814.9	759.0	780.1	815.1
	fish preparation	370.2	446.1	478.2	497.9	494.0	595.8	452.5	377.0	372.9	404.7
E	Electricity and water supply	254.0	290.4	339.7	382.8	439.9	502.8	539.8	588.6	633.5	654.3
F	Construction	710.0	1,088.2	1,298.3	1,448.8	1,950.8	2,078.1	1,302.8	1,423.9	1,694.3	1,673.6
	Tertiary	10,0054.4	10,993.8	9,477.3	11,659.6	12,729.0	14,446.1	14,689.9	15,864.9	16,783.2	16,929.4
G	Wholesale and retail trade	456.7	565.6	608.6	702.8	762.5	862.7	765.4	770.0	850.1	907.0
H	Tourism (Pesort, etc)	3,929.0	4,488.1	2,971.5	4,287.6	4,704.3	4,870.0	4,608.1	5,335.4	5,824.6	5,820.2
I	Transport	1,013.6	1,169.8	1,043.5	1,319.4	1,436.6	1,521.3	1,539.8	1,800.9	1,926.9	1,893.9
I	Communication	762.2	782.1	808.6	965.8	1,113.6	1,446.7	1,769.9	1,803.1	1,954.2	1,970.0
J	Financial service	337.3	391.6	343.0	424.6	475.3	513.0	488.0	512.4	527.8	529.5
K	Real Estate	1,614.4	1,638.2	1,598.7	1,608.3	1,587.9	1,519.1	1,517.0	1,568.3	1,596.9	1,617.4
K	Business services	142.5	165.5	145.0	179.4	200.9	216.8	207.7	216.7	224.0	224.8
L	Government Administration	1,061.4	1,090.5	1,214.5	1,323.3	1,481.7	2,047.0	2,251.8	2,290.0	2,279.0	2,328.5
M	Education	395.6	391.2	406.6	468.9	513.9	740.7	796.3	812.7	836.4	861.6
N	Health	175.6	188.8	205.0	239.4	304.5	494.2	564.4	571.9	577.7	586.0
O	Social services	117.1	122.5	132.4	140.1	147.9	214.7	181.4	183.6	185.7	190.5
	Fisim	-255.13	-263.31	-205.03	-225.57	-224.48	-215.35	-175.48	-198.36	-222.24	-224.81

Source: Department of National Planning, Statistical Yearbook of Maldives for 2013

In the post-Tsunami period there has been a focus on rebuilding the nation's economic and social infrastructure including the tourism industry.¹⁵ The tourism industry since 2003 has continuously contributed an average of approximately 25% share to the Maldivian GDP with 28% percent in 2012 and also made up 38% of total government revenue in 2012.¹⁶

Table 3: Tourism Contribution to GDP, 2008-2012

Year	GDP	GDP Growth %	Tourism Contribution	% Share of Tourism Contribution
2008	18,526.00	12.2	4,870.00	26.3
2009	17,853.00	-3.6	4,608.00	25.8
2010	19,113.00	7.1	5,335.00	27.9
2011	20,461.00	7.0	5,822.00	28.5
2012	21,160.00	3.4	5,862.00	27.7

Source: Ministry of Tourism Yearbook, 2013

¹⁵ See – The Maldives; two years after the Tsunami, 2006, <http://www.planning.gov.mv/publications/Maldives%20-%20Two%20Years%20after%20the%20Tsunami.pdf>

¹⁶ Maldives Ministry of Tourism Yearbook 2013,p.21, http://www.tourism.gov.mv/pubs/Yearbook_2013.pdf

Table 4: Tourism Revenue and Tax, 2008-2012

Year	Total Government Revenue	Tourism Revenue					%Share of Tourism Revenue in Total Government Revenue
		Land Rent	Tourist Bed-night Tax	Tourism Goods & Service Tax (T-GST)	Lease period Extension Fee	Total Tourism Revenue	
2008	6,939.30	-	566.50	-	-	1,969.70	28.4
2009	5,313.30	-	531.41	-	-	1,429.81	26.9
2010	6,392.40	-	594.36	-	-	1,713.86	26.8
2011	9,172.10	1,202.50	750.74	836.52	511.26	3,301.01	36.0
2012	9,366.50	1,034.24	804.72	1,566.35	168.71	3,574.02	38.2

Source: Ministry of Tourism Yearbook, 2013

Macroeconomic and public investment policies which encourage Foreign Direct Investment (FDI) have enabled economic progress and the Maldives graduated upward from a Least Developed Country (LDC) in January 2011 and is classed a lower middle-income country today.

As a small island economy (SIE) with scarce resources due to geographical structure, the Maldives is dependent on external trade of goods and services. Import of mineral resources (27.6 percent of total imports) and machinery and mechanical appliances (17.9 percent of total imports) in 2011 accounted for approximately 45 percent of the import bill of Rf Million 20, 486.¹⁷ The main export earnings are generated through marine products and comprise nearly 97% of the value of total exports for 2012.¹⁸ In 2012, total government revenue and grants amounted to MVR Million 9,832 of which revenue from tax comprised of MVR Million 6,719. Non tax revenue on the other hand only amounted to MVR Million 2,633.¹⁹ Taxes on foreign trade including tourism and related imports continue to be the main source of government revenue for the Maldives.²⁰

¹⁷ Annual Statistical Year Book 2012, Department of National Planning, <http://planning.gov.mv/yearbook2012/yearbook/Foreign%20Trade%20&%20BOP/15.2.htm>

¹⁸ Annual Statistical Year Book 2012, Department of National Planning, <http://planning.gov.mv/yearbook2012/yearbook/Foreign%20Trade%20&%20BOP/15.3.htm>

¹⁹ Annual Statistical Year Book 2012, Department of National Planning, <http://planning.gov.mv/yearbook2012/yearbook/Public%20Finance/13.2.htm>

²⁰ Gunatilaka, Ramani, Employment Challenges in the Maldives, Prepared for ILO Country Office for Sri Lanka and the Maldives, June 2013,

Table 5: Government Revenue, 2008-2015

[In million Rf]								
Particulars	2008	2009	2010	Actual 2011	(Revised) 2012	Budgeted 2013	Projection 2014	Projection 2015
Total Revenue and grants	7,456.5	5,734.8	6,546.9	9,904.6	9,832.0	12,608.9	14,050.0	14,712.8
Total Revenue	6,939.5	5,313.3	6,392.4	9,172.1	9,366.5	12,048.6	13,301.8	13,983.2
Current Revenue	6,897.2	5,299.4	6,343.0	8,637.7	9,352.5	12,041.4	13,294.3	13,975.6
Tax Revenue	3,366.8	2,732.0	2,931.0	4,893.0	6,719.4	8,469.2	10,408.8	11,039.3
Import duty	2,448.8	1,848.8	2,055.8	2,586.5	1,354.4	1,642.3	2,567.1	2,716.3
Export duty	-	-	-	-	-	-	-	-
Tourism tax	566.6	531.4	597.3	750.8	812.8	438.8	-	-
Bank profit tax	240.8	245.7	203.3	229.9	255.9	281.4	309.6	340.6
GST on tourism	-	-	-	665.3	1,579.0	2,847.9	3,847.9	3,932.3
Goods and Service Tax	-	-	-	243.0	978.7	1,029.0	1,255.1	1,505.7
Airport Service Charge	-	16	35.5	337.5	309.5	391.8	504.7	532.9
Business Profit tax	-	-	-	34.9	1,377.0	1,593.6	1,673.2	1,756.9
Telecommunication Tax	-	-	-	-	-	200.0	200.0	200.0
Other 1/	110.6	104.5	39.1	45.1	52.2	49.3	52.0	54.8
Nontax Revenue	3,530.4	2,567.4	3,412.0	3,744.7	2,633.1	3,572.2	2,885.5	2,936.3

Source: Statistical Yearbook of Maldives for 2013, Department of National Planning,

The Household Income and Expenditure Survey (HIES) Report analyses poverty using the head-count ratio, which measures the proportion of the population that is poor for a given poverty line and uses two different poverty lines; International poverty line of US \$1.25 (\$1 a day poverty line used in MDGs) and international poverty line of US \$2 per day. The HIES Report for 2012, indicates that poverty has declined for Republic and Atolls over the past 6-7 years for both the relative poverty lines considered. Poverty for the overall country had shown a decrease, showing a reduction in the share of people living below the poverty line.

Table 6: Headcount ratio for Republic, Male' and Atolls, 2002/03 and 2009/10

Relative Poverty Lnes	Republic		Male		Atolls	
	2003	2010	2003	2010	2003	2010
International poverty line of US \$1.25 (\$1 a day poverty line used in MDGs)	9%	8%	2%	7%	12%	8%
International poverty line of US \$ 2	31%	24%	9%	19%	39%	27%
Rf.44 (Median of Atoll expenditure per person per day for HIES 2009/10)	66%	51%	40%	44%	75%	55%
Rf.22 (Half the Median of Atoll expenditure per person per day for HIES 2009/10)	21%	15%	4%	12%	27%	16%

Source: Department of National Planning, Household Income and Expenditure Survey 2009/2010

The reduction of poverty at the national level has been driven by improvements in living conditions in the Atolls. The international poverty line US\$ 1.25 shows a reduction in poverty in the

country between 2003 and 2010 from 12% to 8% but a considerable increase in poverty estimates for Male' from 2% to 7% for the same period. According to the US\$ 2 poverty line, poverty in the country has seen a general decrease from 31% in 2003 to 24% in 2010 but has risen in Male' from 9% in 2003 to 19% in 2010. Despite an overall decline in poverty, lack of export diversification, lack of diversity of economic opportunities, a gap between demand and supply in the labour market and environmental concerns due to its unique geography makes the population vulnerable to any changes in the political economy of the country.

A general growth in the economy due to investments in tourism and development of tourism related industries as well as improvements in the Atolls may explain the overall reduction in poverty but stands in stark and baffling contrast to figures of unemployment which amount to nearly 24% for the period 2009/2010 under a broad definition of unemployment.²¹

5. Labour market and related issues in the Maldives

The labour market dynamics of the Maldives will be scrutinised in this paper to understand the reason for high levels of immigrant labour in the Maldives whilst nearly a quarter of its labour force remains unemployed. There is a concerning rise in unemployment especially amongst the youth in the Maldives with unemployment amongst women at least a third higher than for men.

In order to understand the true situation of unemployment in the Maldives, two definitions of unemployment have been used in the Household Income and Expenditure Survey (HIES) 2012. The first is the ILO definition which states: 'the unemployed comprise all persons above a specific age who during the reference period were without work (paid employment or self-employed), is currently available for work, and is seeking work'. The second definition is broader and more localized and takes into account the lack of a diverse job market and makes the assumption that some who are unemployed may not be actively seeking jobs in the belief that there are no jobs available. It therefore includes 'discouraged' workers into the estimates of unemployed numbers.

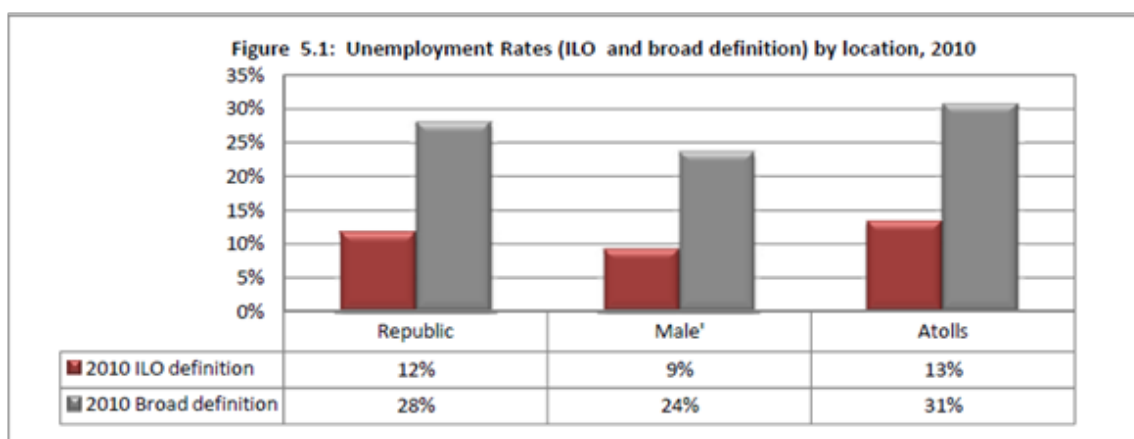
The legal age for employment in the Maldives is 16 years.²² According to the Household Income and Expenditure Report (HIES) of 2009/2010 the total population of 15 years and above was 213,872 whilst the 'economically active' population amounted to 111,426.²³ Of this economically active population, an estimated 13,033 or 11.7% of Maldivians were unemployed. Unemployment rates were higher in the Atolls at 13.3% (9,027) than in Male' where unemployment was 9.2% (4,006). These statistics are based on the ILO definition of unemployment. However, if the broader definition of unemployment which includes discouraged workers (not actively seeking employment) is used, the unemployment rates are much higher. As shown in the graph below, under the broader definition, the unemployment rate for the country as at 2009/2010 is 28% - with unemployment in Male' being 24% and the Atolls a staggering 31%.

²¹Household Income and Expenditure Report 2012 Maldives, p.30 & 41, <http://planning.gov.mv/hies/HIES2012/FINAL%20HIES%20REPORT%20april%202012.pdf>

²²Article 6, Chapter 3 Employment of Minors, The Employment Act 2008

²³HIES Report 2009/2010, Department of National Planning, <http://planning.gov.mv/yearbook2013/yearbook/Employment/5.1.pdf>

Table 7: Unemployment Rates (ILO and broad definition) by location, 2010



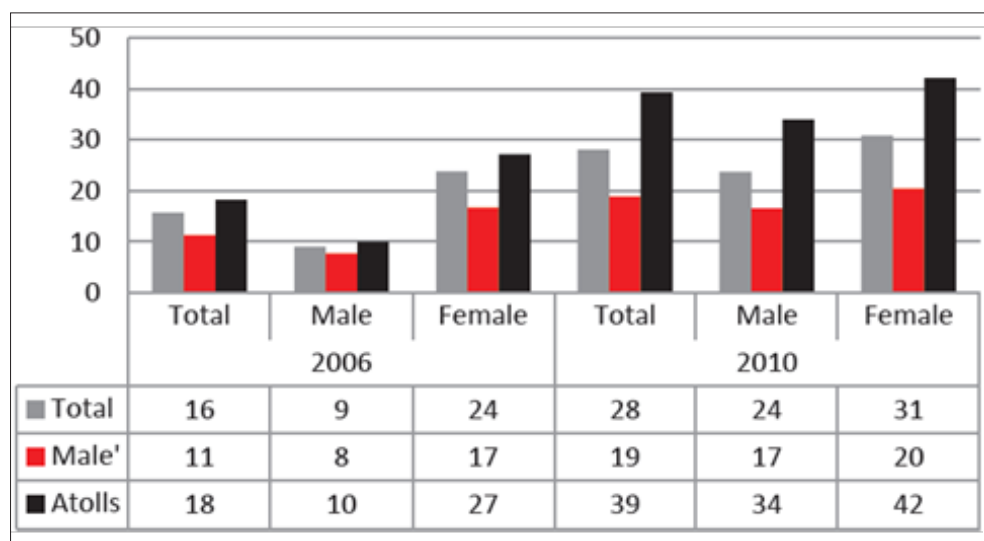
Source: HIES 2009/2010, Department of National Planning

Poverty and unemployment appear to have an inverse relationship between Male' and the Atolls. While rates of poverty in Male' are higher than those in the Atolls, unemployment is lower in Male' than in the Atolls. A possible reason maybe that although as the capital, Male' may have more employment opportunities it may also have more persons who are employed but earning less than/ living below the poverty line of US\$2 or MVR44 – also known as the 'working poor'.

Female participation in the labour force has declined over the years at a higher rate than male participation. Growing religious conservatism, lack of requisite education qualifications and skills levels to access white collar jobs, familial responsibilities, lack of child care facilities, labour market conditions including the need to reside on resort islands in order to take up employment, cultural factors and irregular working hours relating to the tourism industry, transportation constraints are some of the obstacles women face for participating in the labour market. Gender discriminatory practices such as unequal pay for equal work between men and women may also discourage women from employment. Declining labour force participation by Maldivian women should be taken up for active discussion by Maldivian authorities as most research data suggests that, women's employment and access to resources increases human capital and capabilities of households and adds considerably to economic growth and socio-economic development.²⁴ As illustrated in the table below, female unemployment rates are increasing faster than male unemployment rates.

²⁴Gunatilaka, R. Employment Challenges in the Maldives, 2013, Prepared for the ILO Country Office for Sri Lanka and the Maldives

Table 8: Unemployment rates (male and female) broad definition 2006 and 2010



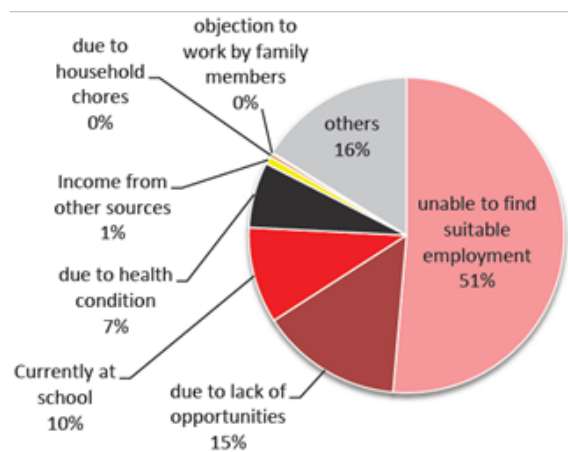
Source: HIES 2009/2010, Department of National Planning

[i] Reasons for high rates of unemployment and discouragement

Employers identify the following reasons for non-employment of Maldivians and consequent demand for migrant labour; lack of interest/unwillingness of Maldivian youth to work in tourist resorts within a residential capacity on isolated resort islands; lack of needs-based training especially for service sectors such as tourism or technical vocations; demand for white collar jobs by Maldivian youth without the requisite levels of education or training; existing training facilities are inadequate and leaves large gaps between employers' requirements and worker's skills; a weak culture of work and inadequate discipline among Maldivian employees who at times quit work after being trained at the expense of employer/company; lack of adequate white collar jobs to match the high expectations of Maldivian youth; affluent families prefer their children to either work in white collar jobs or stay at home; lack of accessible and affordable transportation facilities to tourist resorts, construction sites or other islands with job opportunities; growing issues of drug addiction among Maldivian youth; and restrictions upon women as discussed above.

Maldivian employees and potential employees raise issues of; unwillingness to work in low skilled '3D' jobs which are dirty, dangerous and demeaning, low wages in comparison to an increasing cost of living; substandard and inadequate living and working conditions on resort islands and construction sites; inadequate implementation by employers of the labour conditions stipulated in the Employment Act of 2008; preference of employers to engage migrant workers for low wages who have no choice but to work under harsh working and living conditions and other forms of exploitation; difficulties in competing with foreign workers who are unable to leave employers in most instances; discrimination of employers between nationalities with relatively detrimental treatment of Maldivians; reluctance of employers in tourism and construction industries to grant requisite leave compelling employees to spend long periods away from their families; lack of job security; inadequate social security for those employed in the private sector.

Graph 1: Reasons for being unemployed – Males, 2009/2010



Source: HIES 2012, Department of National Planning

These labour dynamics paved the way for expatriate workers to flow into various industries in large numbers which are indeed highly dependent on these foreign workers for their continuity and profitability. However, there appears to be growing xenophobia among the Maldivian population regarding the sharp increase in migrant labour which they feel enable employers to keep wages at a low rate and maintain poor working environments. The Maldivian government also appears intent on enhancing the tourism sector which brings in the highest revenue, even at the cost of the rights of migrant workers and lack of genuine job opportunities for Maldivian youth through economic diversification.

Although a quota for the employment of expatriate workers is issued by the Department of Immigration which deals with both the numbers of workers and the categories, this is ineffectively implemented by employers. According to the quota system, of the total work force in any place of employment 45% of employees are required to be Maldivians and 55% foreign workers. Further, the lower and higher job categories (skilled and professional) may employ migrant workers but middle level jobs need to be compulsorily reserved for Maldivians (eg:- receptionists)

The situation in the Maldives at present therefore poses a quandary with nearly half the total work-force being foreign even as Maldivian unemployment is in double figures. Of 21 professional and technical categories, nearly 44% employees are foreign workers. In the low skilled categories, 61% of craft-related occupations, 56% of service work and 76% of elementary occupations are taken up by migrant workers.²⁵ The following table is a cross section of the top five occupations and industries which employed the highest number of expatriate workers in 2009/2010.

²⁵Gunatilaka, R. Employment Challenges in the Maldives, Prepared for the ILO Country Office for Sri Lanka and the Maldives

Table 9: Expatriate Employment by Industry and Occupation, 2009/2010

Occupation	Total	Tourism	Financing, Insurance, Business & Real Estate	Communi- ty, Social and Person- al Service	Construction	Hotels & Restau- rants
Total	73,840	11,741	6,299	9,276	31,866	4,321
Legislators, Senior Officials & Managers	1,167	683	292	35	59	26
Professionals	5,483	565	576	1,437	304	18
Technicians & Associate Professionals	3,366	1,229	367	1,004	40	16
Clerical & Related Workers	103	84	7	0	2	0
Service Workers	8,013	3,644	465	227	132	3,366
Skilled Agricultural & Fisheries Workers	338	249	2	9	12	3
Craft & related Trade Workers	19,602	863	1,372	61	16,061	22
Plant, Machine Operators Assembly	1,119	35	362	218	131	23
Elementary Occupations	34,649	4,395	2,856	6,285	15,125	847

Source: Statistical Yearbook 2011, Department of National Planning

6. The tourism industry in the Maldives

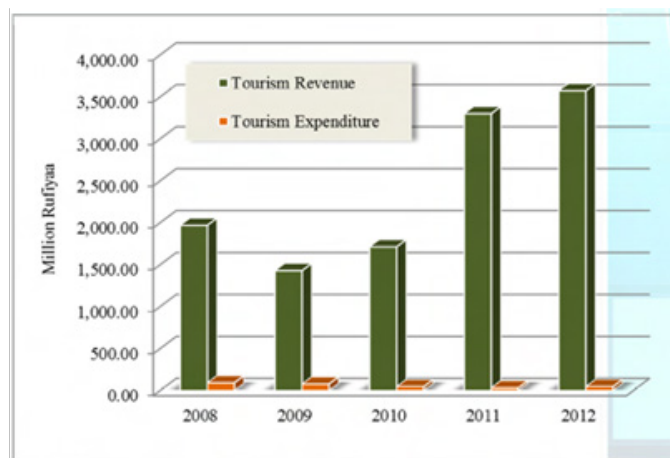
[i] Significance of the tourism industry to the Maldives

In 2012 world travel and tourism industries were estimated to have generated about 9% of global GDP, 5% of total investment and 5% of world exports (ILO).²⁶ Tourism exports represent 30% of world exports of commercial services and global international tourist arrivals increased by an annual average of 4.3% between 2005 and 2010. Tourism has the potential for poverty reduction as growth in the tourism industry is usually accompanied by augmentation of related sectors such as utilities and services, construction, agriculture, transport, entertainment and handicrafts. The Maldives has a unique ‘one-island-one-resort’ concept and is one of the world’s leading island destinations for tourists. At the end of 2012 there were 105 islands developed into resorts with total bed capacity of 22,889 registered with the Ministry of Tourism, Arts and Culture; which was 81% of the total bed capacity of the country in 2012. In 2013 there are 108 resorts.

In contrast to tourism revenues, government expenditure on tourism in the Maldives has been declining over the years. The decrease in government expenditure should be evaluated with regard to insufficient mechanisms for addressing irregular migration, inadequate allocations for monitoring resorts and construction sites by relevant authorities, and the absolute lack of a labour migration policy for the protection of the rights of migrant workers.

²⁶International Labour Organization website, http://www.ilo.org/global/about-the-ilo/newsroom/comment-analysis/WCMS_221967/lang--en/index.htm

Table 10: Tourism revenue and Expenditure, 2008-2012



The Maldives welcomed its first group of tourists in 1972 - 22 Italians who debarked from an Air Ceylon charter on to Hulhule Island.²⁷ Since then, the Maldivian tourism sector has turned into a multi-billion dollar industry. In 2010, nearly 800,000 holiday seekers visited the islands (Ministry of Tourism). Due to a sudden change in government administration on 7 February 2012 and subsequent political unrest there was a noticeable decline in tourist arrivals. The total tourist arrivals were still high in 2012 with an estimated 958,025 but failed to achieve the one million target. With the global recession of 2008, the European market declined slightly but there has been a sharp increase in Chinese tourists with 225,551 arrivals for 2012 alone. However, resort owners claim that Chinese tourists only stay for a maximum of four days – as per emigration regulations in China – in comparison to European tourists who stay for at least a week and therefore earnings are comparatively lower.

Table 11: Tourist Arrivals and Market Share of Top Ten Markets, 2012

Rank 2012	Country	2012		2011		Rank 2011
		Arrivals	Market Share (%)	Arrivals	Market Share (%)	
1	China	229,551	24.0	198,655	21.3	1
2	Germany	98,351	10.3	90,517	9.7	3
3	United Kingdom	91,776	9.6	104,508	11.2	2
4	Russia	66,378	6.9	63,936	6.9	5
5	Italy	62,782	6.6	83,088	8.9	4
6	France	56,775	5.9	59,694	6.4	6
7	Japan	36,438	3.8	35,782	3.8	7
8	Switzerland	35,457	3.7	32,504	3.5	8
9	India	31,721	3.3	30,978	3.3	9
10	Korea	23,933	2.5	25,285	2.7	10
Total		733,162	76.5	724,947	77.8	
Total Arrivals to the Maldives		958,027		931,333		

Source: Department of Immigration and Emigration

²⁷<http://www.maldivesolidays.org/economy-maldives>

The positive correlation between tourism and economic development in the Maldives is undeniable but has been a mixed blessing with negative consequences in terms of violation of migrant workers' rights.

The Ministry of Tourism (MoT) is the prime authority for regulating the tourism industry and all related ventures need to be registered with the ministry. Foreign investors especially have to register with the ministry and can receive up to a 50 year lease on islands marked as potential resort developments. The MoT has the mandate to visit the resorts to ensure compliance with labour and tourism regulations and attempts to carry out inspections at least once a year. However, according to resort workers, since transportation to the resorts is by speed boat or seaplane and the ministry cannot afford to charter its own private transportation, the ministry officials usually depend on resorts for transportation. This defeats the purpose of making unannounced visits to monitor the actual ground situation. Another glaring deficiency is the fact that tourism ministry officials are unable to deal adequately with labour issues as it requires a labour specialist to undertake such problems and provide resolutions.

The Ministry however is also in charge of conducting awareness programmes on the tourism industry to all schools and higher education institutions under the Skills Training and Employment Programme (STEP). The Ministry states that resorts also conduct similar trainings for their employees with several such programmes even being endorsed by the government (eg:- training programme at the Four Seasons resort) but turnover of Maldivian employees remains very high on resorts. It recommends that schools, universities and other education institutions should integrate trainings relating to the tourism industry into their syllabuses. This is despite working on resorts or in the tourism industry is rejected by most Maldivian youth who seek more lucrative white collar jobs. Although the role of the Ministry of Tourism is to both promote tourism and regulate the industry, the emphasis appears to be on promotion.

[ii] Women in the tourism industry

“Women perform 66 per cent of the world’s work, produce 50 per cent of the food, but earn 10 per cent of the income and own 1 per cent of the property.”²⁸

Globally, women make up 60% to 70% of all workers in the tourism industry but tend to earn less than men with a fewer number occupying managerial posts. They are in fact disproportionately represented in low skilled and lower paid jobs such as housekeeping and some customer care areas due to key reasons of gender discriminatory policies, cultural and social restrictions.²⁹ In the Maldives in 2011, there were only 919 females in the hotels and restaurant sector in comparison to 6,179 males. Many of the women who work in the hotel, catering and tourism sectors are women migrant workers from South East Asia. There are few South Asian women in the hotel industry in the Maldives. One of the primary reasons being the ‘image’ of the hospitality sector which creates societal restrictions upon women taking up employment.

Sri Lankan resorts operating in the Maldives mostly attracts Sri Lankan men for internal transfers as well as fresh recruitments. Sri Lankan women do not seem to be seeking out opportunities in

²⁸UN Women: Facts & figures on women, poverty & economics, poverty & employment, http://www.unifem.org/gender_issues/women_poverty_economics/facts_figures.html?#2

²⁹Baum, T. International perspectives on women and work in hotels, catering and tourism, Working Paper 2/2013, ILO Geneva, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_209867.pdf

these resorts abroad. If however recruitment of men to the exclusion of women is a deliberate practice instead of necessity due to scarcity of women applicants, Sri Lankan resort companies need to urgently review their employment policies to implement a gender equal policy for all occupations within their employment strata.

[iii] Sri Lankan Resorts in the Maldives

Companies in the Sri Lankan leisure sector were among the first to take advantage of the popularity of Maldives as a tourist destination Aitken Spence Plc, John Keells Holdings and more recently the Mount Lavinia hotel groups have opened chains of luxury resorts in the Maldives. Employees within these resorts are mostly Sri Lankans including management level staff. Most are recruited internally from within the Aitken Spence, JKH, or Mount Lavinia staff cadres in Sri Lanka. Recruitment is stipulated to be within the quotas issued by the Department of Immigration and Emigration.

[a] Aitken Spence Plc

Aitken Spence Plc was established in 1868³⁰ and in 1971 became a wholly Sri Lankan owned business venture. Aitken Spence owns and manages an international chain of hotels and resorts in Sri Lanka, the Maldives, India and Oman. The Aitken Spence tourism sector includes; hotels, inbound and outbound travel and airline GSA. In 2012/2013 Aitken Spence reported a revenue of Rs. billion 37.1 and profit for the year of Rs. Billion 4.3. Aitken Spence has a total of 6,207 employees for 2012/2013 of which 2,789 are reportedly in the tourism sector.

Table 12: Employees Information (Aitken Spence PLC Annual Report 2012/2013)

No. of employee	6,207	5,791	5,328	5,042	5,045	5,090	4,199	4,209	4,209	4,112
Value added per employee	1,980	1,915	1,884	1,770	1,635	1,503	1,467	1,038	857	897

**Table 13: Revenue according to location
(Aitken Spence PLC Annual Report 2012/2013 – Tourism Sector)**

8.2.1 Geographical information - revenue				
	TOTAL REVENUE GENERATED		REVENUE FROM EXTERNAL CUSTOMERS	
	2012/2013	2011/2012	2012/2013	2011/2012
	Rs.'000	Rs.'000	Rs.'000	Rs.'000
Sri Lanka	30,835,950	25,135,108	27,910,056	22,655,733
Maldives	9,749,291	7,812,500	8,942,208	7,034,382
Other countries	290,831	1,334,800	287,663	1,331,508
	40,876,072	34,282,408	37,139,927	31,021,623

³⁰The Colombo-based diversified conglomerate has significant interests in Plantations, Insurance, Financial Services, IT, Printing and Garments. Aitken Spence Website; http://www.aitkenspence.com/about_us/hotels_logistics_power_sri_lanka.asp

Table 14: Aitken Spence PLC Annual Report 2012/2013 – Ten Year Summary

Year ended 31st March	** 2013	** 2012	2011	2010	2009	2008	2007	2006	2005	2004
	Rs.'000	Rs.'000	Rs.'000	Rs.'000	Rs.'000	Rs.'000	Rs.'000	Rs.'000	Rs.'000	Rs.'000
Operating Results										
Revenue	37,139,927	31,021,623	25,143,811	24,168,970	29,307,818	27,515,960	19,765,632	13,593,263	10,063,989	9,157,160
Profit before taxation	5,001,262	5,183,354	3,815,555	3,353,169	3,396,916	3,064,792	2,582,088	1,910,115	1,721,123	1,883,501
Taxation	747,176	746,090	387,335	366,193	328,385	235,110	298,018	197,623	162,599	184,005
Profit after taxation	4,254,086	4,437,264	3,428,220	2,986,976	3,068,531	2,829,682	2,284,070	1,712,492	1,558,524	1,699,496
Profit attributable to Aitken Spence PLC	3,266,838	3,487,669	2,535,956	2,059,636	2,040,010	1,841,150	1,459,774	1,213,661	1,116,776	1,275,523

Aadaran in the Maldives...

Aitken Spence was the pioneer Sri Lankan hospitality company to develop an overseas portfolio and entered into the Maldivian tourism industry in 1993 and acquired the Bathala Island resort in the Maldives. In 2005 it opened the Aadaran Prestige Water Villa with twenty luxury water villas in Meedhupparu Island in the Maldives. Other Aadaran resorts in the Maldives include; Aadaran Hudhuran Fushi; Aadaran Meedhupparu; Aadaran Prestige Ocean Villas; Aadaran Club Rannalhi; Aadaran Prestige Vadoo,.

Of the total number of Aitken Spence employees, the tourism sector accounts for the largest percentage totaling 45% of all company employees across four employment categories. Aitken Spence employees' numbers have grown from 4,112 in 2004 to 6,207 in 2013. Many of them work as migrants in Aitken Spence hotel chains in the Maldives.

[b]John Keells Holdings³¹

John Keells Holdings was a produce and exchange broking business started by two Englishmen in the 1870s. It became a public quoted company in 1974. It has now diversified into: consumer food and retail, financial services, information technology, leisure, property, transportation, plantation services. The leisure sector of JKH has however been one of the most consistently developing areas as indicated in the chart below.

Table 15: JKH Total Revenue

REVENUE*	Rs. billion						
	TRP	LEISURE	PROP	CF&R	FIN SER	IT	OTHER
2012/13	25.11	20.59	3.17	24.27	11.11	6.80	3.55
2011/12	23.65	17.42	3.79	21.97	9.87	6.72	2.68
2010/11	18.31	13.81	2.49	18.36	9.50	4.23	3.12

Source: Annual Report 2012/2013, John Keells Holdings

³¹See JKH website: <http://www.keells.com>

It is within this financial capacity that JKH has invested in luxury resorts in the Maldives as well. Chaaya Island Dhonveli Resort in the Maldives is the holding company for: Chaaya Lagoon Hakuraa Huraa; Chaaya Reef Elaidoo; Cinnamon Island Aidhoo. The leisure sector of JKH has employed the most capital as well as employees in the JKH group with a total of over 5,000 staff being employed.

Table 16: JKH Capital Employed

	TRP	LEISURE	PROP	CF&R	FIN SER	IT	OTHER
2012/13	17.09	45.04	12.61	12.51	8.30	2.60	23.14
2011/12	16.64	36.72	9.95	9.04	7.19	2.46	18.26
2010/11	14.17	30.69	7.73	6.97	6.39	1.77	14.10

Table 17: JKH Total number of Employees

	TRP	LEISURE	PROP	CF&R	FIN SER	IT	OTHER
2012/13	636	5,272	103	3,415	1,401	1,267	1,130
2011/12	594	4,843	99	3,147	1,047	1,114	1,112
2010/11	572	4,459	99	3,029	1,121	979	1,130

Source: JKH Annual Report 2012/2013

(c) The Mount Lavinia hotel group has recently opened Vakaru falhi resort in the Maldives comprising of 75 villas. This is a relatively new development and will not be analysed in detail due to lack of tangible data regarding migrant worker employees.

[iv] Issues of Sri Lankan workers in Sri Lankan resorts

Many of the issues faced by Sri Lankan workers in Sri Lankan resorts are similar to those faced by Sri Lankans in foreign owned and managed resorts. However, these issues are of a less severe nature than those faced by other nationalities in the same locations.

Discriminatory practices; Sri Lankan workers state they are relatively well looked after in Sri Lankan resorts. In comparison, living conditions of other nationalities are cramped, without sufficient ventilation or sanitation facilities. According to one Sri Lankan returnee even food is served separately in some of these resorts with Sri Lankans having access to the main buffets and other nationalities being served in a staff restaurant.

Lack of transparent mechanisms for distribution of Service Charges; Returnee migrant workers state that the total amount of service charge is not disclosed or distributed in a transparent manner.

Lack of information; Sri Lankan hotels although prone to recruit Sri Lankans working within their own companies do not have a practice of disseminating useful information such as labour regulations or redress mechanisms.

Trade Union activity discouraged; Although Sri Lankan workers claim to have few issues, it is noted that trade unionism is discouraged in most resorts and internal issues are encouraged to be resolved through discussions with management. This is despite the strong links between trade unions and these companies in Sri Lanka.

Lack of registration with SLBFE; The SLBFE which registers all migrant workers does not have the mandate to monitor Sri Lankan workers employed by Sri Lankan employers/companies abroad.

Lack of relevant pre-departure orientation by SLBFE: Male migrant workers (apart from those migrating to South Korea) are given the same pre-departure training which focuses on labour migration to the Middle East only.

Sri Lankan resorts appear to treat Sri Lankan workers with dignity – in fact better than they treat certain other nationalities according to reports by workers, complaints to the Labour Relations Authority (LRA), and information gathered by Tourism Employees Association of Maldives (TEAM). The standard of labour and human rights protection provided by Sri Lankan resorts to Sri Lankan workers should in fact be maintained as a minimum standard for all workers within Sri Lankan resorts and as a best practice for any other resorts which maybe implementing inferior standards relating to workers.

7. International outbound labour migration in Sri Lanka; with a focus on the Maldives

[i] An overview of Sri Lankan labour migration

International outbound labour migration in Sri Lanka as a quantifiable trend began in the 1970s with the oil industry boom in the Middle East with a demand for male labour migrants. The consequent economic growth in these host nations paved the way for employment opportunities for women as well - primarily as domestic workers, caregivers and cleaning staff. This was the start of a new phenomenon which created both economic wealth and socio-cultural issues in Sri Lanka in common with many other countries of origin.

Increased migrant worker remittances have had a significant impact on reducing the current account deficit from 7.8% of the Gross Domestic Product (GDP) in 2011 to 6.6% of total GDP of Rs.7,582 billion in 2012. Higher remittances has been primarily due to increasing numbers of migrant workers rather than escalated migration of skilled and professional workers. However, an increase in the number of semi-skilled and skilled workers to South Korea has also had a visible impact on remittances. The continuous reduction in market demand and prices for traditional exports such as tea, rubber and coconuts, a decline in the apparels industry, and fluctuations in the tourism industry, has resulted in the Sri Lankan government being heavily dependent on migrant worker remittances to keep the economy afloat, replete foreign reserves and contain levels of unemployment.

Table 18: Departures for Foreign Employment in Sri Lanka 1986-2011

Year	Male		Female		Total
	No.	%	No.	%	
1986	11,023	76.25	3,433	23.75	14,456
1987	10,647	75.37	3,480	24.63	14,127
1988	8,309	45.09	10,119	54.91	18,428
1989	8,680	35.11	16,044	64.89	24,724
1990	15,377	36.08	27,248	63.92	42,625
1991	21,423	32.97	43,560	67.03	64,983
1992	34,858	28.00	89,636	72.00	124,494♣
1993	32,269	25.00	96,807	75.00	129,076♣
1994	16,377	27.22	43,791	72.78	60,168
1995	46,021	26.68	126,468	73.32	172,489
1996	43,112	26.52	119,464	73.48	162,576
1997	37,552	24.99	112,731	75.01	150,283
1998	53,867	33.71	105,949	66.29	159,816
1999	63,720	35.45	116,015	64.55	179,735
2000	59,793	32.82	122,395	67.18	182,188
2001	59,807	32.50	124,200	67.50	184,007
2002	70,522	34.61	133,251	65.39	203,773
2003	74,508	35.51	135,338	64.49	209,846
2004	80,699	37.59	134,010	62.41	214,709
2005	93,896	40.60	137,394	59.40	231,290
2006	90,170	44.65	111,778	55.35	201,948
2007	103,476	47.37	114,983	52.63	218,459
2008	128,232	51.19	122,267	48.81	250,499
2009	119,381	48.31	127,745	51.69	247,126
2010	136,850	51.16	130,657	48.84	267,507
2011*	135,870	51.67	127,090	48.33	262,960

*Provisional Source: Information Technology Division-SLBFE
 ♣ Airport Survey-SLBFE 1992-1993

Source: Annual Statistical Report 2011, SLBFE

Table 19: Total Departures for Foreign Employment by Country 2007-2011

Country	2007 No.	%	2008 No.	%	2009 No.	%	2010 No.	%	2011 No.	%
Saudi Arabia	60,485	21.69	67,443	26.92	77,788	31.48	70,830	26.45	61,637	26.10
Kuwait	41,022	11.78	46,941	18.74	42,377	17.15	48,108	17.98	50,657	19.26
UAE	39,018	11.86	51,174	10.43	39,603	16.03	42,310	15.81	39,339	14.96
Qatar	38,943	11.83	39,476	15.75	43,888	17.76	54,676	20.44	52,553	19.99
Lebanon	6,939	3.18	4,963	1.98	5,905	2.39	6,064	2.27	5,147	1.96
Oman	3,912	1.79	4,747	1.90	5,329	2.16	6,367	2.38	5,382	2.05
Baharain	4,975	2.28	4,653	1.86	5,925	2.40	7,052	2.64	5,429	2.06
Maldives	3,915	1.79	4,225	1.65	3,902	1.58	4,178	1.56	4,197	1.60
Cyprus	3,004	1.38	2,829	1.13	2,911	1.19	2,772	1.04	3,036	1.15
South Korea	2,680	1.23	6,995	2.79	3,993	1.62	5,261	1.97	7,411	2.82
Singapore	947	0.43	1,079	0.43	1,026	0.42	1,942	0.39	1,076	0.41
Malaysia	1,043	0.48	1,293	0.52	1,060	0.42	3,593	1.38	2,461	0.94
Hong Kong	316	0.14	299	0.12	352	0.14	306	0.11	366	0.14
Mauritius	947	0.43	357	0.14	654	0.26	329	0.12	361	0.14
Seyshells	326	0.15	890	0.36	622	0.25	174	0.07	179	0.07
Egypt	191	0.09	240	0.10	172	0.07	284	0.11	58	0.02
Libya	54	0.02	235	0.09	161	0.07	462	0.17	28	0.01
Israel	829	0.38	1,255	0.90	940	0.38	1,376	0.70	1,481	0.56
Greece	61	0.03	125	0.05	139	0.06	111	0.04	91	0.03
Afganistan	-	-	70	0.03	60	0.02	749	0.28	482	0.18
North Yemen	3	0.00	-	-	-	-	1	0.00	2	00
South Yemen	31	0.01	25	0.01	54	0.02	42	0.02	27	0.01
Ghana	--	-	2	0.00	5	0.00	2	0.00	2	0.00
Ethiopia	8	0.00	13	0.01	5	0.00	5	0.00	4	0.00
Diibouti	-	-	-	-	3	0.00	2	0.00	-	-
United Kingdom	17	0.01	26	0.01	64	0.03	22	0.01	16	0.01
Ireland	3	0.00	4	0.00	2	0.00	4	0.00	2	0.00
Pakistan	62	0.03	47	0.02	59	0.02	44	0.02	57	0.00
Australia	6	0.00	43	0.02	17	0.01	15	0.01	18	0.01
Sudan	5	0.00	4	0.00	22	0.01	38	0.01	6	0.00
Syria	25	0.01	49	0.02	35	0.01	25	0.01	21	0.01
Kenya	7	0.00	7	0.00	14	0.01	5	0.00	12	0.02
South Africa	28	0.01	20	0.01	18	0.01	28	0.01	59	0.02
Madagascar	3	0.00	-	-	1	0.00	1	0.00	1	0.00
Rwanda	-	-	2	0.00	10	0.02	38	0.01	-	-
Mongolia	16	0.01	8	0.00	-	-	-	-	-	-
Swaziland	2	0.00	1	0.00	3	0.00	4	0.00	4	0.00
Rumania	-	-	-	-	119	0.05	54	0.02	137	0.06
Kurdistan	-	-	-	-	-	-	307	0.11	4	0.00
Algeria	6	0.00	202	0.08	104	0.04	113	0.04	127	0.05
New Zealand	7	0.00	24	0.01	39	0.02	11	0.00	12	0.00
Bangladesh	22	0.01	19	0.01	49	0.02	32	0.01	103	0.04
Canada	5	0.00	21	0.01	41	0.02	14	0.01	20	0.01
China	2	0.00	1	0.00	4	0.00	5	0.00	5	0.00
Italy	25	0.01	17	0.01	22	0.01	15	0.01	15	0.01
Brunei	6	0.00	11	0.00	16	0.01	13	0.00	12	0.00
United States	1	0.00	11	0.00	11	0.00	4	0.00	10	0.00
Thailand	1	0.00	2	0.00	6	0.00	6	0.00	2	0.00
Japan	9	0.00	79	0.03	184	0.07	124	0.05	99	0.04
Botswana	15	0.01	12	0.00	19	0.01	13	0.00	6	0.00
Switzerland	-	-	0	0.00	3	0.00	-	-	-	-
India	18	0.01	14	0.01	64	0.03	90	0.03	85	0.03
Vietnam	4	0.00	1	0.00	9	0.00	3	0.00	2	0.00
Uganda	-	-	6	0.00	68	0.03	92	0.03	15	0.01
Others	65	0.03	162	0.06	179	0.07	266	0.10	522	0.20
Total	218,459	100.00	250,499	100.00	247,126	100.00	267,507	100.00	262,960	100.00

Source: Annual Statistical Report 2011, SLBFE

At present, Sri Lanka has an estimated 2 million registered migrant workers in over fifty five countries³³ amounting to nearly one tenth of its population of 20.8 million.³³ Of these, nearly 95% of total labour migrants are employed in eight countries in the Middle East of: Saudi Arabia, Kuwait, United Arab Emirates, Qatar, Lebanon, Jordan, Oman and Bahrain (SLBFE, 2011). Maldives is the next largest destination country.

The Sri Lanka Bureau of Foreign Employment (SLBFE) is the primary regulator of labour migration in Sri Lanka and functions under the purview of the Ministry of Foreign Employment Promotion and Welfare (MFEPW). The establishment of a separate institutional mechanism and related laws and policies – with a focus on the National Labour Migration Policy 2008 - to deal with international labour migration has been of assistance in regulating the process to a great extent. Lack of successful implementation of policies nonetheless continues to create large gaps in protection especially for women migrant workers.

[ii] Issues prevalent within the Sri Lankan labour migration process

The labour migration process is divided widely into three stages for purposes of analysis;³⁴ pre-departure, in-service and return and reintegration - although there are many issues which overlap between these stages.

[a] Pre-departure

Recruitment agencies and sub agents (individuals who work with agencies in recruiting potential migrant workers but are unregistered and unregulated themselves) are the hubs of labour migration in countries of origin and destination. Recruitment agencies engage in abusive practices, deceiving and coercing potential workers into exploitive employment, giving them false information on conditions of work and rate of pay and even carrying out physical or sexual abuse. High migration costs, institutional incapacity, lack of coordination amongst institutions regulating overseas labour and internal corrupt practices create further gaps in protection through debt bondage and failure to prevent and penalise perpetrators of human trafficking. This situation is aggravated by the lack of registration and regulation of sub agents who do not fall within any legal mechanisms for the regulation of labour migration. The Sri Lankan government has stated its intention to change existing legislation to include compulsory registration and regulation of sub agents but there is no consultative process or transparency in amending these laws.

[b] In-service period

Excessively long working hours without rest days, lack of freedom of movement and association, irregular or non-payment of salaries, confiscation of passports until completion of contract are

³²Annual Statistical Report of Foreign Employment 2011, Sri Lanka Bureau of Foreign Employment, p.14-25, <http://www.slbfe.lk/downloads/stat/CountryBasis.pdf>

³³Sri Lanka's labour force was 8,465,000 in 2012 with average outflows of migrant workers exceeding 260,000 each year. According to Central Bank of Sri Lanka statistics for 2012, the unemployment rate has declined from 4.2 percent in 2011 to 4 per cent in 2012. (Sri Lanka Central Bank Annual Report 2012)

³⁴Rights, Remittances and Reintegration: Women Migrant Workers and Returnees in Sri Lanka, Ed. B. Skanthakumar, 2011, Law & Society Trust, Colombo, Sri Lanka, See: Discriminated Abroad and at Home: Sri Lankan Women Migrant Workers, Miyuru Gunasinghe, p 7-22. See also, Human Rights Watch (2004). Bad Dreams – Exploitation and Abuse of Migrant Workers in Saudi Arabia, p.19-70, www.hrw.org/sites/default/files/reports/saudi0704.pdf; Human Rights Watch (2010). Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East, p.8-10, www.hrw.org/sites/default/files/reports/wrd0410webcover_0.pdf

common complaints of migrant workers during the service period. Graver charges of physical, sexual, and psychological abuse, food deprivation, forced labour akin to slavery at times for multiple employers, and forced prostitution are unique to women domestic migrant workers. Lack of legally binding bilateral/multilateral agreements and standard contracts which establish the equal rights of migrant workers, minimum wages and international labour terms and conditions give rise to many violations. The exclusion of migrant workers from rights guaranteed in national labour laws, inadequate access to legal and interpretation services in the host country leaves them doubly vulnerable.

[c] Return and reintegration

Many women migrant workers often have to deal with breakdown of marriages and the disintegration of the family unit, rejection by society, physical or sexual abuse of their children due to inadequate protection from guardians, whilst issues common to all returnees include: lack of alternative livelihoods, insufficient savings and continued indebtedness. Economic success typically comes at the cost of domestic and social tribulations. Many of the reintegration programmes in existence cater to semi-skilled or skilled workers who return with remittances and do not include viable livelihood or social security options for low-skilled workers without adequate savings, indicating prioritisation of remittances over rights by state authorities.

The Sri Lankan government is relatively progressive in comparison to many of its Asian origin country counterparts in the regulation of labour migration and has put in place registration, pre-departure training processes, trainings for labour attaches, a welfare fund for migrants and their families and is in the process of amending existing legislation to include the human rights of migrant workers and the regulation of sub agents. Lack of effective implementation of these valuable measures is however a major drawback for migrant workers to access their rights and benefits in a timely manner.

[iii] Sri Lankan labour migration to the Maldives

The Sri Lankan expatriate workforce has the third highest presence in the Maldives. According to SLBFE statistics, there is an average of approximately 4,000 Sri Lankans migrating to the Maldives each year since 2007. The following tables have been compiled using the SLBFE Annual Report for 2011.³⁵

Table 20: Total Departures for Foreign Employment by Country 2007 – 2011 (2011 -provisional)

Country	2007		2008		2009		2010		2011	
	No	%	No	%	No	%	No	%	No	%
Maldives	3,915	1.79	4,228	1.69	3,902	1.58	4,178	1.56	4,197	1.60
Total	218,459	100	250,459	100	247,126	100	267,507	100	262,960	100

³⁵Annual Statistical Report of Foreign Employment – 2011, Sri Lanka Bureau of Foreign Employment website. <http://www.slbfe.lk/article.php?language=2&article=68>

In analysing data for 2011, the 4,197 Sri Lankan migrant workers to the Maldives comprises of high numbers of skilled and unskilled workers amounting to 1,615 and 1,524 respectively with professional, middle level and clerical together amounting to 830 workers. The majority of workers to the Maldives are therefore skilled or professional.

Table 21: Departures for Foreign Employment by Country & Manpower Level 2011 (2011 -provisional)

Country	Professional	Middle Level	Clerical & related	Skilled	Semiskilled	Unskilled	Housemaid
Maldives	294	261	275	1,615	32	1,524	196
Total	3,835	6,106	9,888	67,703	4,169	63,443	107,816

Numbers of female departures remain low – only around a tenth of male migration statistics. The majority of women migrant workers appear to migrate as domestic workers to the Maldives. (See Table 23 and 24–data extracted from the SLBFE Annual Report 2011)

Table 22: Departures for Foreign Employment through all sources by country & sex 2007 – 2011

Country	2007		2008		2009		2010		2011	
	male	female	Male	Female	Male	female	male	female	male	female
Maldives	3,538	377	3,796	432	3,423	479	3,680	498	3,719	478
Total	103,476	114,983	128,232	122,267	119,381	127,745	136,850	130,657	135,870	127,090

Table 23: Female departures as Housemaids by country 2007 – 2011 (2011 – provisional)

Country	2007		2008		2009		2010		2011	
	No.	%	No.	%	No.	%	No.	%	No.	%
Maldives	238	0.23	236	0.22	270	0.24	304	0.27	196	0.18
Total	102,355	100	107,923	100	113,678	100	112,752	100	107,816	100

A notable aspect of Sri Lankan labour migration to the Maldives is that most migration is through direct sources are not registered with the SLBFE, finding employment through friends and family already resident or employed in the Maldives.

Table 24: Departures for Foreign Employment through Direct Sources by Country & Sex 2007 – 2011 (provisional)

Country	2007		2008		2009		2010		2011	
	Male	female	male	Female	Male	female	male	female	male	female
Maldives	2,560	359	2,542	413	2,782	460	3,017	483	2,996	468
Total	45,646	26,298	59,504	30,022	59,137	31,422	74,521	33,274	79,806	36,698

8. International labour migration to the Maldives

Statistics for 2013 show that the Maldives has 111,579 documented migrant workers but an estimated 44,000 undocumented workers are also reported to be in the economy.

Table 25: Active Visa Count by Nationality (Department of Immigration and Emigration 09 January 2013)

Nationality	Count
Bangladesh	51,487
Indian	31,093
Sri Lankan	14,539
Nepalese	3,156
Indonesian	2,211
Filipino	2,015
Thai	1,015
Chinese	665
Italian	643
German	601
Total	111,579

(The chart contains statistics for the ten nationalities which comprise the highest numbers of migrant workers in the Maldives for 2013)

Traditionally, the foremost occupations to be filled especially by Sri Lankan migrant workers were in education and finance and the trend continues to date. Health services are also dependent on foreign doctors and nurses which include those on resorts. The status of these migrant workers however is wholly different from less skilled workers and they enjoy a status similar to nationals. In common with some host countries (eg:- host countries in the Middle East) which are economically developed but lack the laws and institutions to provide social protection for migrant workers, Maldives too lags behind in the area of protection of migrants through legal and institutional frameworks. National labour regulations contained in the Employment Act 2008 are however applicable to migrant workers and are quite expansive in the rights and entitlements given to workers. Nonetheless, the isolated geographical locations which provide the environment for forced labour, non-cooperation by employers, lack of awareness of workers make these provisions difficult to implement at ground level.

[i] Issues identified within the labour migration process in the Maldives

The US State Department categorizes traffickers into three groups; families that subject domestic workers to forced labour; employment agents who bring low skilled migrant workers to host countries under false terms of employment and upon payment of exorbitant fees; and employers who subject the migrants to conditions of forced labour such as inhumane living and working conditions, confiscation of identity and travel documents, withholding or nonpayment of wages, and debt bondage upon arrival. Migrant workers to the Maldives are primarily subject to the second and third categories or forms of trafficking of fraudulent recruitment practices and forced labour conditions during employment.

Some of the key issues which plague the labour migration process in the Maldives are: lack of migration specific policy or institutions; lack of laws combating trafficking and punishing perpetrators – *although this may be rectified with the implementation of the Anti-Human Trafficking Bill being passed into law*; inadequate mechanisms for identifying victims of trafficking, human smuggling and irregular migrants; insufficient policies to assist victims of trafficking and repatriate them; overlapping mandates which are passed between government agencies ultimately leading to loss of data and accountability; requirement for clear and unambiguous protocols for work permit and visa issuance, and quota allocation.

The open visa system of the Maldives which issues visa upon arrival may also add to the issues of irregular migration as the onus is upon immigration officials to identify forged documents and other irregularities without sufficient time for consideration or investigation. A new Border Control System is reported as being discussed and upgraded technology such as biometric systems for visa will facilitate such efforts.

Between 2001 and 2010, 186 cases of HIV positive migrant workers have been identified according to the Ministry of Health (2011). The Ministry of National Planning (2012) report that Immigration regulations are being revised for migrant workers to undergo health checks prior to entering the country. Public awareness programmes should also be carried out concurrently.

[ii] Common concerns of all migrant workers in the Maldives

“Bangladeshi workers are treated like slaves or animals at a previous resort I worked in. It is a pathetic situation.” (Sri Lankan migrant worker in the Maldives interviewed on 4 November 2013).

The common problems of all migrant workers are examined below through official statistics as well as information gathered from migrant workers, government authorities and civil society in the Maldives.

The Labour Relations Authority has compiled the following data regarding the types and numbers of complaints received from migrant workers between 2008 and 2011. This is an extremely small percentage of the actual issues faced by migrant workers. Many migrant workers including Sri Lankans do not even know of the existence of the LRA and those who do, may not contact them for numerous reasons. However, the following data is indicative of the most common problems faced by most migrant workers especially within the tourism sector in the Maldives.

Table 26: Complaints lodged by migrant workers to the LRA 2008-2011

Complaints lodged by Migrant Workers to Labour Relation Authority	2008	2009	2010	2011
Request for assistance to return back to country	1718	1487	302	505
Non-payment of wages	64	52	83	60
Request to change employer			2	67
Unable to obtain passport				6
Unable to obtain return ticket or wages in order to return back to the country		145	21	9
Food and accommodation issues	1	4	12	27
Delay in the payment of wages or hostile work environment			42	

**Graph 2: Complaints lodged by migrant workers to the LRA,
January 2011- November 2011**

**Complaints lodged by Migrant Workers
from 1st Jan 2011 to 29th Nov 2011**



Source: Labour Relations Authority

Although complaints regarding food and accommodation are increasing, the actual numbers which are much higher are not reflected in this data. Key reasons for this gap are because most migrant workers accept this situation as unalterable and do not want to lose their jobs through agitating for better living conditions.

Transparency Maldives (TM)³⁶ assists migrant workers through its Advocacy and Legal Advice Center (ALAC) which highlights the following points as exacerbating the human trafficking situation and fuelling corruption;

- Inadequate border control system
- Inability by state institutions to institute punitive action against those who break the law
- A system that promotes and rewards corruption by failure to punish perpetrators
- Justice and redress systems are non-existent or inaccessible to victims.

The Human Rights Commission of the Maldives has conducted ‘rapid assessment of the employment situation in the Maldives’ study in 2009³⁷ and comments thus on the plight of trafficked migrant workers in the Maldives;

“Many migrant workers are left without work upon arrival and often their agent abandoned them in small apartments with no food, work or legal documents. In an alien country, with no support system and unable to communicate in the native language these migrants are afraid to move freely in the country. They also do not have adequate information on how to seek assistance and are

³⁶TM is an international organization involved in monitoring, raising public awareness and initiating public discussion on corruption and its detrimental effects on society and development assists migrant workers through their Advocacy & Legal Advice Center (ALAC) in filing complaints and providing legal advice and translations, advocacy for broader reform, and conducting outreach/awareness programmes for migrant workers.

³⁷Rapid Assessment of the Situation of Employment in the Maldives 2009, Human Rights Commission of the Maldives, <http://www.hrcm.org.mv/Publications/otherreports/TheEmploymentSituationintheMaldivesEng.pdf>

reluctant to seek help due to fear of arrest or deportation.” (HRCM Parallel Report to the ICCPR 2012)³⁸

The HRCM urges the government to ratify the UN Convention on the Rights of All Migrant Workers and Members of their Families.

9. Institutional mechanisms for regulation of labour migration and gaps in implementation and practice

[i] Department of Immigration and Emigration;³⁹

The Department of Immigration and Emigration which is regulated under the Immigration Act 1/2007⁴⁰ holds the mandate to issue employment quotas, work permits and resident permits (also known as working visas).⁴¹ Although the Ministry of Human Resources, Youth and Sport was previously mandated to issue work permit, this responsibility has now been transferred to the Department of Immigration and Emigration in order to integrate the process and reduce inconsistencies. The work permit is a written statement giving permission to work in the Maldives while the resident permit is an endorsement giving permission to stay in Maldives. [A person entering the Maldives for employment purposes should have a copy of the work permit issued from the Department at the time of arrival. It is the responsibility of the employee to confirm employment and obtain a copy of the work permit prior to arrival in the Maldives; a person who has entered the Maldives on a Tourist Visa will not be allowed to change the visa category to a resident permit subsequently. Resident permits are conditional on the validity of the work permit. If the work permit is invalid, Resident Permit maybe cancelled on re-entry or exiting Maldives.] The Department of Immigration under the purview of the Ministry of Home Affairs is the main responsible organization for border control, issuing/ rejecting visas, monitoring the stay of foreigners and issuing passports to Maldivian citizens.

The database on migrant worker statistics has also been shifted from the Labour Relations Authority to the Department of Immigration and Emigration. During this transfer much of the data has been lost and the Immigration Department is experiencing many difficulties with the new database.

[a] Repatriation and detention measures for irregular migrant workers under the Immigration Act 1/2007

Repatriation measures are carried out by the Department of Immigration utilizing the security deposit which all employers make for every migrant worker they employ or bring in to the

³⁸Human Rights Commission Shadow Report to the ICCPR 2012, http://hrcm.org.mv/publications/otherreports/HRCM_Shadow_report_to_ICCPR.pdf

³⁹Department of Immigration and Emigration of the Maldives website, Laws & Regulations, http://www.immigration.gov.mv/index.php?option=com_content&view=article&id=125&Itemid=114

⁴⁰Immigration Act 1/2007, Department of Immigration and Emigration, http://www.immigration.gov.mv/images/stories/laws/The_Maldives_Immigration_Act.pdf

⁴¹Previously, employment of foreigners was allowed only under a work permit granted from the Ministry of Human Resources, Youth & Sports. The Department of Immigration and Emigration, Maldives then issued a Resident Permit (Working Visa) based on the validity of the Work Permit.

Maldives.⁴³ The security deposit will be used to cover detention charges and airfare and varies according to the nationality due to differing airfare charges. Where a worker has left the original employer and/or has no employer, it will still be the initial security deposit which is used to cover repatriation expenses.

The Controller of Immigration has the authority to ‘make arrangements for accommodation’ of foreign nationals who have overstayed their visas but are unable to depart immediately. This is also applicable to migrant workers whose permits have expired or been revoked. Special attention is given to ensure that detention does not exceed 15 days, but the time frame depends on the documentation process and issues with accruing travel documents.

The Department of Immigration cannot be expected to look into aspects of labour migration such as the rights and welfare of migrant workers but it may be logical to formulate a special unit for labour migration within the Department of Immigration for better cohesion and collaboration on regulation and protection aspects of labour migration.

[b] Issues of arrest and detention of migrant workers

Lack of translation/ interpretation facilities during arrest of migrant workers by Maldivian Police, detention in overcrowded detention centers and lack of access to justice in a swift and impartial manner remain matters for concern. The HRCM states in its employment assessment report of 2009 that some detainees are confined unconstitutionally for more than a month without a court order; court cases involving migrant workers may have two to three year delays; and migrants may not be given adequate translation/ interpretation facilities during the process.

[ii] Labour Relations Authority

The Labour Relation Authority (LRA) established under the Employment Act of 2008 (Chapter 9, Art.77-84) is the foremost government institution in the Maldives for observing compliance with the provisions of the Employment Act. As such it is mandated to investigate complaints, mediate in employer-employee disputes, raise awareness and make observations to relevant Ministers. Employment officials have the power to enter work premises without prior notice, inspect records and implement steps to alleviate situations which may threaten the health or safety of employees.

Although the LRA carries out inspections, the geographical area covered is extremely limited, it is restricted in the legal redress it can provide,⁴⁴ and due to lack of cooperation by employers is unable to give adequate resolution in many cases. The LRA should be strengthened through expansion of mandate and redress mechanisms, financial and human resource allocations, and capacity building. The LRA should also undertake to raise awareness of migrant workers of their mandate and role through campaigns and working in collaboration with the Department of Immigration and Emigration.

⁴³The Immigration Department has in the past undertaken related initiatives for combating trafficking such as training of police officers in collaboration with the Maldives Police Service Department on legislation and issues of human trafficking in the Maldives in an effort to devise operational indicators to identify victims of trafficking and understand the full scope of the challenges faced by the Maldives.

⁴⁴LRA can only issue orders to make changes regarding which threaten the health/safety of employees, if the employer is dissatisfied, they may refer to the Employment Tribunal (Art.79 (b) Employment Act 2008). Additionally, under Art. 84 Employment Act, any person who obstructs the duties of employment officers, does not comply with orders issued by them, obstructs a person from presenting themselves to an employment official or falsely represents one self to be an employment official may be penalised with a fine or a one year jail term plus fine.

[iii] Employment Tribunal

The Tribunal is established by the Employment Act 2008 (Chapter 10, Art.85-88) to examine and adjudicate legal matters arising at work between employer and employee and any other matters ascribed to the Tribunal under the Employment Act. Jurisdiction includes investigating complaints regarding; breach of fundamental principles in the Employment Act (Chapter 2); unfair dismissal; denial of minimum wage entitlements; contravention of employment agreement; appeals to review decision of Minister on complaints against employment agencies; appeals by employees against unreasonable disciplinary measures; any other matter stipulated to be reviewed by the Tribunal as per law.⁴⁵

The tribunal is rarely accessed by migrant workers as proceedings are primarily conducted in Divehi. As a tribunal for all workers, it should be made available to migrant workers through proceedings conducted in English and better translation facilities. Further, the employment tribunal follows High Court rulings which at times may favour the employer – eg- HC had ruled that an employee can be dismissed at any time due to redundancy. The members of the Tribunal are appointed and their salaries determined by the President of the Republic (in consultation with the Ministry of Finance and Treasury) casting doubt on the independence of the Tribunal.

[iv] Human Rights Commission of the Maldives

The HRCM is established under the Human Rights Commission Act No. 6/2006 to protect, promote and sustain human rights in the Maldives in accordance with national, regional and international laws and is mandated to undertake complaints alleging violations of human rights. The HRCM maintains a focal group on labour migration which monitors and addresses issues of migrant workers and advocates on behalf of the rights of migrant workers. There is a toll free number which can be used by migrant workers.

Unfortunately though most migrant workers are unaware of their rights under Maldivian laws and are therefore unable to identify violation of these rights. They also lack knowledge of the role and mandate of the HRCM and how to access them. The HRCM are also unable to access migrant workers within working locations due to practical, budgetary constraints. Consequently insufficient numbers of migrant workers make complaints to the Commission.

10. International legal human rights framework; as applicable to migrant workers

‘No one shall be held in slavery or servitude.... Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests. Everyone has the right to rest and leisure....reasonable limitation of working hours’. –**Universal Declaration on Human Rights (UDHR)**

⁴⁵Decisions of the Tribunal are considered final and not subject to appeal, unless it is in ultra vires of its powers in which case it can be appealed to the High Court (art. 86, Employment Act 2008).

[i] Non-derogable human rights of migrant workers under international laws

International law provides the protection of fundamental human rights which applies to all migrant workers as set out in the 9 core international human rights treaties. The International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), International Convention on the Rights of the Child (CRC) are of direct significance to the situation of migrant workers and their families, whilst the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW)** sets new standards of protection and prevention for both documented and undocumented or irregular migrant workers as well as their families. The Maldives has ratified the core Conventions and many of the Optional Protocols *except the Convention on Migrant Workers*.⁴⁶ These core Conventions establish a list of **non-derogable rights** which are directly applicable to migrant workers.⁴⁷

The Maldives in January 2012 ratified the eight International Labour Organization (ILO) fundamental Conventions⁴⁸ which will come into force in January 2014. Additionally, the ILO⁴⁹ has approved three Conventions especially on the rights of migrant workers:

- ILO Migration for Employment Convention, 1949 (C-97)
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (C-143) – which specifically deals with irregular migration and calls for equality of treatment.
- ILO Convention Concerning Decent Work for Domestic Workers, 2011 (C-189)

[ii] The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW)⁵⁰ *The Need to Ratify*

The ICMW promotes ‘sound, equitable, humane and lawful conditions’ in connection with international migration of workers and members of their families and is undoubtedly the most comprehensive document addressing the rights of migrant workers. As mentioned before, Bangladesh and Sri Lanka are the only South Asian countries to have ratified this Convention. There has been little progress in Bangladesh however regarding its implementation and consequently Bangladeshi migrant workers continue to be trafficked and abused. Significantly, the Convention

⁴⁶Ministry of Foreign Affairs website, <http://foreign.gov.mv/new/tpl/show/content/conventions03/>

⁴⁷Other international human rights treaties relevant to migrant workers include but are not limited to: UN Convention against Transnational Organized Crime and its Protocols; ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions) (N143) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Protocol against the Smuggling of Migrants by Land, Sea and Air; Slavery Convention and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, Institutions and Practices Similar to Slavery; Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live; Durban Declaration and Programme of Action; Resolution of the UN Commission on Human Rights on the Human Rights of Migrants (2005); Resolution of the UN General Assembly on Protection of Migrants (2004).

⁴⁸The Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

⁴⁹The ILO presently has a project office in the Maldives which undertakes to; review labour laws including assisting the development of the Industrial Relations Bill and strengthen labour administration.

⁵⁰For full text of the ICMW see - Office of the United Nations High Commissioner for Human Rights website, <http://www2.ohchr.org/english/bodies/cmw/cmw.htm>

addresses the rights of both documented and undocumented workers whilst providing additional rights to documented workers and their families.

Some of the identified **obstacles to ratification** of the International Convention on Migrant Workers as well as related ILO Conventions include: lack of adequate information regarding the implications and consequences of ratification, national laws and policies which are incompatible with provisions in the Conventions, lack of coordination between relevant state actors involved in labour migration and/ or affected by ratification, lack of political will due to fears and misconceptions that if migrant workers are accorded the range of human and labour rights contained in the Conventions, this may lead to loss of labour opportunities in the host country. The unique establishment of rights of irregular migrant workers under the ICMW is considered to pose considerable obstacles to its acceptance and ratification.

It is the strong recommendation of this paper that the Maldives consider the swift ratification of the ICMW and put in place the requisite national laws, migration policies and institutional mechanisms for the implementation of the provisions of the Migrant Workers Convention. This paper also recommends that all countries of origin which are yet to ratify the Convention on Migrant Workers do so with urgency and effectively implement the rights of migrant workers enshrined within its provisions.

[iii] Global commitments of governments

Other global commitments of governments include: the Vienna Declaration and Programme of Action 1993⁵¹; Cairo Program of Action 1994⁵²; Copenhagen Declaration 1995⁵³; and the Beijing Declaration and Platform for Action 1995⁵⁴

[iv] International anti-trafficking legislation; the urgent need to implement anti-trafficking measures in the Maldives

Article 3, paragraph (a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons 2000 (Palermo Protocol) defines Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

⁵¹For full text see - http://www.unfpa.org/webdav/site/global/shared/documents/publications/2004/icpd_eng.pdf

⁵²For full text see - http://www.unfpa.org/webdav/site/global/shared/documents/publications/2004/icpd_eng.pdf

⁵³For full text see - <http://www.un.org/esa/socdev/wssd/text-version/agreements/decparte.htm>

⁵⁴For full text see - <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons 2000 also known as the Palermo Protocol defined trafficking in persons and drew the attention of the international community on combating human trafficking. It was the first international instrument which appealed for the criminalization of all acts of trafficking – including forced labor, slavery, and slavery-like practices. It also declared that governments should respond in a manner which incorporates the ‘3P’ paradigm: Prevention, (criminal) Prosecution; and (victim) Protection.

The Maldives is however not yet a party to the UN Trafficking in Persons (TIP) Protocol. This paper stresses the importance of acceding to the TIP Protocol by the Maldives.

Further, Article 3 of Protocol Against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime defines the smuggling of migrants as the “procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”

Article 6 of the Smuggling of Migrants Protocol requires states to criminalize both smuggling of migrants and enabling of a person to remain in a country illegally. States are also required to penalize aggravating circumstances that endanger lives or safety or entail inhuman or degrading treatment of migrants. Trafficked or smuggled migrants are vulnerable to, at times, life-threatening risks and exploitation. This tragic reality was evidenced on 3 October 2013, when a boat carrying nearly 500 smuggled migrants mostly from Ethiopia and Eritrea to Europe capsized near the coast of Sicily killing over 360 people even as the world was preparing to hold the UN High Level Dialogue on Migration and Development on 4 October 2013.⁵⁵

The situation of these smuggled migrants if and when they arrive in the destination country improves very little as unscrupulous agents and employers keep them living and working in slavery like conditions due to their lack of choice as irregular migrants. However, the huge profits for all those involved in smuggling migrants continues to fuel corruption and empower organized crime.

11. The trafficking predicament of the Maldives...

According to the US Trafficking of Persons Report 2013; *‘The Government of Maldives does not fully comply with the minimum standards for the elimination of trafficking. The government has not demonstrated evidence of increasing efforts to address human trafficking over the previous year; The government continued to lack systematic procedures to identify victims of trafficking among vulnerable populations and failed to refer those victims to protective services. Although the government reported it prosecuted some sex trafficking cases, the government did not take concrete actions to protect trafficking victims and prevent trafficking in Maldives; instead, the government penalized some trafficking victims for offenses committed as a result of being trafficked. Government officials continued to conflate human trafficking with human smuggling and the presence of undocumented migrants in Maldives and most actions promoted by the Government of Maldives as anti-trafficking efforts involve measures to reduce undocumented labor migration rather than measures to address the serious problem of involuntary servitude.’*

The US State Department Report on Trafficking 2013 states that Maldives was placed on a Tier 2 watch list (along with countries such as Sri Lanka) for the fourth consecutive year due to

⁵⁵‘Italy, Malta say EU must press Libya to stop boat migration’, Voice of America, 11 November 2013, <http://www.voanews.com/content/reu-italy-malta-say-eu-must-press-libya-to-stop-boat-migration/1787803.html>

non-compliance of the Maldivian government with the minimum standards for the elimination of trafficking. It was granted a waiver from being downgraded to Tier 3 because the government has a written plan to address issues of trafficking which if implemented would make significant progress to meet these minimum standards.

An ‘**Anti-Human Trafficking Bill**’ was drafted and passed in the People’s Majilis (Parliament) on 8 December 2013 as this report was being finalized. The Bill once enacted into law establishes penalties for perpetrators of human trafficking which includes imprisonment for 10 to 15 years. The bill also criminalizes offenses such as forced labour and fraudulent recruitment practices as acts of human trafficking. It is imperative however that the regulations should be expanded to include human smuggling which also remains a considerable concern in the Maldives.

The ‘**Anti-Human Trafficking Action Plan 2012 - 2015**’ has been developed with the aid of the International Organization on Migration (IOM). According to the State Department Report though, most government initiatives promoted as anti-trafficking efforts are actually aimed at reducing undocumented labour migration rather than combating serious trafficking issues and involuntary servitude.

[i] Enactment of the 3Ps -

Prosecution; The passing into law of the Anti Human Trafficking Bill in November 2013 is a very positive development and shows active intention on the part of the Maldivian government to combat issues of human trafficking but requires effective mechanisms for implementation. The Employment Act 2008 prohibits but does not penalize most forms of forced labour.

Protection; In December 2012, the Ministry of Gender, and Health received approval to expand an existing shelter to include services for male and female victims of trafficking. The Trafficking of Persons Report states that the shelter was not operational during the reporting period. The government of the Maldives is yet to develop formal processes to identify victims of trafficking and/or direct them to services such as shelters, counseling, medical care and legal aid.

Prevention; The Ministry of Gender established an anti-trafficking unit in February 2013 with a staff of 10 officials and a 24-hour hotline but suffers from a lack of translators. The Department of Immigration and Emigration blacklist Maldivian recruitment agencies engaged in fraudulent practices but there is little evidence whether the ‘blacklists’ are actually enforced. The LRA continues to raise awareness and undertake complaints from migrant workers but is limited due to non-compliance of employers. The emphasis appears to be upon arresting migrant workers who may be irregular due to their trafficked status. Employer is at most penalized for three months.

[ii] Recommendations to the Government of the Maldives

[a] Concluding Observations adopted by the Human Rights Committee for the International Covenant on Civil and Political Rights (ICCPR) regarding the Maldives at its 105th session, 9-27 July 2012⁵⁶

The Committee is concerned at reports relating to trafficking in migrants from neighbouring countries for labour and sexual exploitation purposes. While noting that trafficking is prohibited by article 25 (a) of the Constitution, the Committee is concerned that no legislation has yet been

⁵⁶ <http://www.ccprcentre.org/doc/2012/07/G1245583.pdf>

enacted by the State party to prevent and protect against trafficking in persons. The Committee is further concerned at the lack of statistical data on the number of trafficked persons, the investigations conducted, the number of prosecutions and convictions, and the protective measures put in place, as well as the absence of a strategy to combat trafficking (art.8).

The State party should:

- (a) Conduct a study on the root causes of trafficking and provide statistical data on those trafficked;
- (b) Speed up the adoption of the Bill prohibiting and punishing all forms of trafficking in persons and implement it;
- (c) Investigate incidences of trafficking and prosecute those responsible;
- (d) Provide protective measures, in particular shelters, as well as rehabilitation and compensation to victims;
- (e) Adopt a National Plan of Action on Trafficking in persons.

[b] The US State Department Trafficking in Persons Report 2013

The Trafficking Report makes the following detailed recommendations to the government of the Maldives; pass and enact prohibiting and punishing all forms of trafficking; clearly distinguish between human trafficking, human smuggling and undocumented migrants in all policies; develop and implement systematic procedures for identifying victims of trafficking; ensure trafficking victims are not penalized as a result of being trafficked; increase efforts to investigate and prosecute suspected trafficking offenses; ensure trafficking victims have access to victim services; accede to the UN Trafficking in Persons (TIP) Protocol.

12. Maldivian labour laws and policies

A new Constitution establishing fundamental and labour rights and an Employment Act which overruled existing labour laws were enacted in 2008. All migrant workers fall within the Maldivian legal framework and are therefore regulated by and have equal rights under these laws. The right to work, the right to form trade unions and to participate in their activities, and the right to strike in protest are all newly granted labour rights; *but the right to collective bargaining has not been specified in any legislation*. Subsequent laws such as the *Freedom of Peaceful Public Assembly Act* and the *Regulation Concerning Assembly* have however restricted the right to assembly and strike in violation of national laws and international obligations.

[i] The Constitution of the Republic of Maldives 2008

The Fundamental Rights Chapter (Chapter II) of the Constitution of the Maldives guarantees that “everyone is entitled to the rights and freedoms guaranteed in this chapter without discrimination of any kind...”(Art.17) and that “every individual is equal before and under the law and has equal protection”(Art.20). This effectively guarantees that the provisions of fundamental rights is applicable to all persons and not restricted to Maldivian citizens.

Art. 25(a) establishes that “no one shall be held in slavery or servitude, or be required to perform forced labour”. This is of direct and central importance in establishing the rights of victims of trafficking and forced labour in the Maldives. Article 54 strengthens this position and provides that “no person shall be subjected to cruel, inhumane and degrading treatment or punishment or torture”.

Article 37 establishes the right to just and safe conditions of work, fair wages, equal remuneration for work of equal value, equal opportunities, as well as the right to rest and leisure including limits on hours of work and periodic holidays with pay.

[ii] Employment Act 2008

The Employment Act determines the fundamental principles relating to employment in the Maldives and prohibits all forms of forced employment and discrimination (Art.3 and Art.4). It also establishes the Labour Relations Authority and an Employment Tribunal to protect the labour rights guaranteed in the Employment Act.

The definition of ‘forced employment’ is however rather narrow and speaks only of ‘labour obtained under threat of punishment, undue influence or intimidation’ and does not include other human and labour rights violations such as poor living and working conditions, non-payment of wages, confiscation of passports.

Other key areas of relevance are:

- The Employment Agreement (Art.13) – the Act does not stipulate that an employment agreement compulsorily requires a notice period for resignation or termination. *This paves the way for dismissal without adequate notice.*
- Disciplinary measures (Art.19) – employer may employ measures of; counseling, caution in writing, suspension from employment for a period not exceeding 14 days, and demotion. *Employees may be fined for absenteeism which is a rather contentious provision and prone to be misused by employers.*
- Dismissal cannot be on the basis of discrimination, an employee exercising their rights under this Act, or membership of *or involvement in a workers association* (Art.21).
- Dismissal without notice – the conditions for such dismissal are wide and leaves room for interpretation making the employee vulnerable. However the employee may submit a complaint to the Tribunal within three months of dismissal (Art.23).
- Working hours are 48 hours and no more than 6 consecutive days a week. Additional hours should be paid overtime (Exempts certain categories of persons such as emergency crews) (Art.32). For every 5 hours of work, 30 minutes break must be given (Art.35).
- Leave entitlement - employees who have completed one year are entitled to 30 days annual paid leave (Art.39) and 30 days sick leave – (Art.42) *In comparison Sri Lankan leave entitlements are; Annual- 14 days, Casual -7 days and Sick -7 days.*
- Sanctions employees for paid maternity leave of 60 days and paternity leave of 3 days, paid family responsibility leave and parental responsibility leave (Art.43, 46-49).
- Women with children below one year of age are allowed two daily breaks of half an hour each to facilitate feeding (Art.45).

- Remuneration – Except for temporary employees (who may be paid on a daily basis) all other employees shall be paid on a monthly basis (Art.50). Any deduction of wages need to be according to law or court order; deductions maybe for loans given to employee and based on written consensus of employees; or deductions for leave, medical or insurance (Art.54). *These provisions do not address the basis for deduction of salary at resorts, hotels, restaurants for breakages.*
- Service Charge – Only up to 1% of total service charge received maybe deducted by employer as administrative fees. The rest (99% of total service charge) shall be distributed to employees each month (Art.52). *There should be a stipulated transparent mechanism for calculation, declaration and distribution of service charges.*
- **Foreigners in employment – the Act stipulates that ‘the Minister shall within six months of this Act coming into forces enact and publish regulations to govern the employment of foreigners,... dismissal of foreigners...’** (Art.63)*There are still no clear policies in this regard however.*
- The Act prohibits employment agencies from charging a fee directly or indirectly from a potential employee. Agencies may charge an agreed fee from an employer (Art.68). *Trafficked migrant workers continue to be charged exorbitant fees by recruitment agencies which keeps them in severe debt-bondage.*
- The employer is required to provide measures for the safety and protection of employees at the workplace (Art.73). *This does not however cover living conditions of workers resident at the place of employment and only covers safe working conditions and accidents at the work place.*
- Chapters 9 and 10 deal with the establishment, mandate and functions of the Labour Relations Authority and Employment Tribunal as described previously.

[iii] Immigration Act 1/2007

The Immigration Act lays down the rules for the departure and entry of Maldivian nationals, and entry, departure and deportation of foreign nationals (Art.1). ‘Persons who are unable to prove that they have sufficient funds for daily subsistence and accommodation for their period of stay in the Maldives or unable to prove employment or the existence of an employment contract in the Maldives will not be granted leave to enter the Maldives’ (Art.8).⁵⁷ *Although the Immigration Act speaks of ‘accommodation’ for foreign nationals who are required to leave the Maldives, it does not specify this as detention or clarify procedures for such detention including time periods.*

Article 15 describes a work visa as ‘the permit to remain in the Maldives for the duration of a work permit granted to a foreign national visiting the Maldives for the purpose of working, where a work permit has been obtained by that foreign national consistent with the regulations of the concerned Government authority’.

The Act specifies rules for the detention and removal of foreign nationals. Article 21(d) of Immigration Act stipulates that in cases of foreign nationals whose permits have expired or been revoked, ‘This Act does not prevent the Controller of Immigration and Emigration making arrangements for accommodation of a foreign national whom, pursuant to subsection (c), is unable to depart immediately from the Maldives, and is compelled to remain in the Maldives’. Art.21 (c) states that ‘a foreign national remaining in the Maldives after the revocation of his permit to

⁵⁷See Art. 8 Immigration Act 1/2007 for other categories under which permission maybe refused - http://www.immigration.gov.mv/images/stories/laws/The_Maldives_Immigration_Act.pdf

remain in the Maldives, or a foreign national remaining in the Maldives without any permits is strictly prohibited under this Act’.

Art.30 lays down the responsibilities of Maldivians or persons in the Maldives dealing with foreign nationals who are disallowed from; engaging a foreign national who does not have an entry permit or work visa in any form of employment or accommodating anywhere a foreign national who does not have an entry permit.

[iv] Regulation governing dispute resolution between the employer and employee

‘This Regulation outlines the guidelines that should be followed by every person employed in the Maldives and all other workers in exercising their right to stop work and strike in order to protest, as such, right to strike is guaranteed under the Constitution’, (Article 1(a)). The objective of these Regulations is to establish guiding principles to be followed when disputes arise between employer and employee.

Article 6(b) of the Regulations state that the employer and employee should attempt to work out disputes amicably, failing which the dispute should be reported to the LRA. Strike action should only take place after failure to reach a settlement following seven days notice to settle the dispute. According to Article 6(c), strike action should only be taken after giving the employer three days notice prior to date of commencement. For those employees taking part in the strike, basic salary and other benefits shall be given for a period of two days but it is not mandatory to give service charge for days in which they did not work. **No employer may dismiss an employee for taking part in a strike action carried out according to the Regulation – Article 10 (d).**

The Regulations allow for the strike to be carried out at the work place or an area around it, near staff quarters, or near the relevant department which administers work and employment. Strikes should not disrupt fundamental services such as; provision of health services, water and electricity, defence and police services, telecommunications, air traffic control (Art.9). This provision contradicts the right to strike which will as a matter of course disrupt the provision of services to some extent.

Strikes are required to be peaceful at all times and destruction of property, abusive language, intimidation and harassment, direct obstructions to customer service and obstruction of police when performing their lawful duties are prohibited by the Regulations. (Art.5). Art.7 defines the areas in which strike action may be carried out. Those contravening Regulation provisions may be fined between MVR 10,000/- – MVR 50,000/- (Art.13).

Although these Regulations further establish the Constitutional right of employees to resort to strike action, the following laws restrict these rights through imposing restrictions on the right to assembly.

[v] Restrictions on the Right to Assembly

[a] The Freedom of Peaceful Public Assembly Act

The Act defines ‘assembly’ as a group with more than a single person for the same purpose, intentionally and in a public or private place to express opinions peacefully (Art.7). Article 9(a), defines a peaceful gathering as ‘being one where the organizers have notified authorities that this is a gathering to achieve a peaceful purpose...’ *This would effectively mean that even two*

persons expressing their views can be considered an assembly and any such 'assembly' may not be regarded as a peaceful gathering if authorities are not informed in advance. This requirement for notification is in violation of the Constitutional right to assembly without prior notification to state authorities.

The Act defines types of assemblies and outlaws demonstrations outside private residences and some government buildings without prior approval from the Maldives Police Service as (Art. 24). Under the Act, citizens are not allowed to hold gatherings within a certain distance of the headquarters of police and the Maldives National Defence Force (MNDF). Demonstrations would also be outlawed within a certain distance of the residences of the president and the vice president, the offices of the Maldives Monetary Authority (MMA), tourist resorts, harbours utilized for economic purposes, airports, the President's Office, the courts of law, the Parliament, mosques, schools, hospitals and buildings housing diplomatic missions. Any demonstrators wishing to protest against a specific individual may not use megaphones, stand outside, or have a sit-down outside that person's residence.

The regulation also state that demonstrators do not need to seek authorization ahead of a gathering but police must be notified of any pre-planned demonstrations before they commence (Art.27). The Act states that the right to assemble can be narrowed in the instances of a perceived threat to national security, or to maintain public safety (Art.33).

Such restrictions have direct and wholly negative implications on trade union activities. They also affect to a marked degree the carrying out of political campaigns. The provisions of this Act are in direct contravention to the rights and freedoms guaranteed within the Constitution which is the highest law in the country and should be taken up as a priority for further debate and amendment. These restrictions are also in violation of the international obligations of the Maldivian government as a member of the ILO.

[b] The Regulation Concerning Assembly

The Constitution establishes new labour rights of; freedom of association – to form and join associations and societies, freedom of assembly *without the prior permission of the State and the right to strike.*

These rights are violated by the Maldivian government itself through passing the Regulation *Concerning Assembly* enforced on 15 April 2006 which requires at least three persons representing the organizers of public assemblies to submit a written form to the Maldives Police Service (MPS) 14 days prior to the intended gathering. According to the HRCM Shadow Report on ICCPR in June 2002 on April 25, 2012 the High Court invalidated Article 4, 6, 7, 8(c), 13 and a part of Article 3 citing contradiction with the Constitution.⁵⁸ These articles required that the person organizing the demonstration be identified in advance, the provision for MPS to deny permission to conduct demonstrations, imposing conditions on the freedom of assembly, setting time limits for the duration of demonstrations, and the prerequisite of giving the Maldives Police Service prior notice of the demonstrations.

⁵⁸HRCM Shadow Report on ICCPR in response the Maldives Initial State Report, http://www2.ohchr.org/english/bodies/hrc/docs/ngos/HRCM_Maldives_105.pdf

The ICCPR Human Rights Committee at its 105th session in Geneva, on July 2012 has also expressed concern regarding incidence of violence during demonstrations and makes the following statement;

The Committee, while noting that article 32 of the Constitution guarantees the right of peaceful assembly for everyone and without prior permission, is concerned at the “Regulation concerning Assembly”, which requires at least three persons representing the organizers of public assemblies to submit a written form fourteen days in advance. It is particularly concerned at reported cases of excessive use of force by the Police and the National Defence Forces during demonstrations, including during those which took place from 16 January to 6 February 2012. (art. 21).

The State party should fully guarantee the right to freedom of assembly in compliance with the Covenant and revise its legislation accordingly. It should adopt procedures and regulations in compliance with human rights standards for the police in controlling large crowds of protestors. It should investigate incidents which occurred in the State party, in particular during the 2012 demonstrations, and prosecute and bring Police and Defence Forces officers responsible to justice.

(c) The Bill Prohibiting Tourism Boycotts which was accepted by the People’s Majilis on 20 October 2013 criminalizes ‘calls for a boycott, as well as the supporting or endorsing of a boycott, participating in a tourism boycott, or any act that would incite fear amongst tourists’⁵⁹. According to their the level of participation in the boycott, those found guilty could be fined MVR150,000 (US\$9740), have their trade permits cancelled, or have any honors or privileges awarded by the state revoked. Any attempt to assemble or strike by a trade unions could of course easily be interpreted to fall within the provisions of this Bill which if passed into law would add even further restrictions upon trade union activities in the tourism sector.

13. Tourism Employees Association of Maldives (TEAM)

TEAM is the only trade union within the tourism industry and was formed in 2008. It now has over five thousand members; although due to geographical isolation, insufficient personal incomes and other issues, only approximately three hundred and thirty members pay dues. The TEAM structure includes a president, two vice presidents, a general secretary, a treasurer, and ten executive committee members.

TEAM came into being after a crisis on a resort which lead first to a petition by one hundred and fifty workers which was ignored by the management and later a strike involving three hundred and sixty resort workers. The police became involved in attempting to disperse the strikers in a protest which ultimately turned violent. The dispute was temporarily settled and TEAM was registered as a trade union. Ultimately though further disputes between the employers and members of TEAM lead to the resort terminating their contracts.

⁵⁹ ‘Majlis accepts bill to criminalise tourism boycotts’, Minivan News, 20 October 2013, <http://minivannews.com/politics/majlis-accepts-bill-to-criminalise-tourism-boycotts-70222>

TEAM members in an interview on 26 June 2013 stated that the Employment Act 2008 initially targeted civil servants and other public officials which was later expanded to include private sector employees. Resort workers were excluded from provisions in labour laws in 2008 and TEAM created a petition which collected ten thousand signatures and warned of impending strikes if the laws were not amended. Parliament in a special meeting in August 2008 decided to include resort workers. TEAM had also tendered over a hundred submissions for the amendment of the Act.

The TEAM executive committee state that most of its members are locals. Migrant workers may support their actions but are reluctant to become members. They profess that this is yet another reason employers in the tourism industry prefer migrant workers. The context of labour market dynamics in the Maldives which have lead to employment of migrant workers were corroborated by TEAM.

There are instances of successful collaboration between TEAM and migrant workers which have brought about successful negotiations with the management on behalf of workers. An interview on 06 November 2013 with a member of TEAM and Sri Lankan workers in a foreign resort in the Maldives elicited the information that TEAM has set up a network of members at the resort and taken the lead in resolving disputes with the management.

Issues faced by TEAM

- Some of the key members of TEAM such as the President, General Secretary are not allowed access to workers on most resorts.
- Authorities as well as employers are reluctant to signify recognition of TEAM
- The Media is not willing to support trade unionism – at times due to conflict of interests
- There are very few dues paying members leading to financial constraints
- Lack of committed members to carry out regular union activities, trainings, campaigns etc
- Most workers are unaware of (especially migrant workers) or disinterested in engaging with labour mechanisms and unionism making it more difficult to interest them in trade union activity
- There is a risk to personal safety involved in trade union activity
- It is difficult to get workers to attend the elections although there is a General Assembly every two years (first was held in 2010, the second in 2012)

However, the ILO and other international organizations have supported the work of the TEAM and the executive members have attended the ILO tripartite assembly in Geneva.

The reluctance of migrant workers to join trade union activity maybe due to the confrontational style of unionism which TEAM has at times displayed but also because migrant workers do not wish to become involved in any union activities in a foreign country for fear of reprisals or termination of contract. It must be noted that a continuously aggressive style of unionism will not always be productive of desired results - although in most countries including Sri Lanka, the beginnings of trade union movements have been militant in nature. The TEAM leadership should also ensure fair and impartial elections which lead the way to continuous change and avoid stagnation and make efforts to train other members to take up leadership. Also, the question must be raised as to why, if five thousand workers are members of TEAM only three hundred plus are willing to pay their dues. According to information from both employers and employees, it is easy

to set up bank accounts, direct debits etc in Male' and instructions are accepted via fax. Isolated geographical location is an inadequate reason for non-payment of dues. Is it therefore that workers become members to secure their protection at resorts but do not sufficiently understand or credit the work of TEAM in protecting their rights?

Recommendations: TEAM should be flexible in their modus operandi to change according to the relevant issue and situation. Trade unions in the Maldives including TEAM need to engage with global and regional movements on unionism and secure their support for trade union activities. TEAM also needs to publicize their campaigns among the labour force - although lack of support by the media, restrictions by the police, non-recognition by authorities and rejection by employers make this an arduous and long term task.

14. Sri Lankan labour migration legislation and policies

This report will not undertake a comprehensive analysis of Sri Lankan laws and policies as the focus is upon the status of migrant workers in the Maldives whereby Maldivian laws are applicable to them. The following framework includes the two primary instruments regulating labour migration in Sri Lanka.

[i] The Sri Lankan Bureau of Foreign Employment Act No. 21 of 1985

The SLBFE Act establishes the Bureau and makes provisions for the regulation of international outbound labour migration. All outgoing migrant workers are compulsorily required to register with the SLBFE. *Sub agents are currently not regulated under any legislation and continue to engage in trafficking with absolute impunity. The SLBFE mandate does not extend to Sri Lankan employers in foreign countries and therefore Sri Lankan migrants working in Sri Lankan resorts are not regulated or protected by the SLBFE which is a considerable gap in their mandate and function.*

[ii] The National Labour Migration Policy 2008⁶⁰

This is an extremely comprehensive policy based on the Convention on Migrant Workers which Sri Lanka ratified in 1996 (The Convention came into force in 2003). Its main objective is to promote opportunities for all to engage in migration for decent and productive employment in conditions of freedom, equity, security and human dignity. The policy comprises of 3 sections; governance of the migration process; protection and empowerment of migrant workers and their families; and linking development and migration processes. *Unfortunately, implementation has been slow especially in formulating bilateral agreements with host countries and implementing successful reintegration programmes for returnees.*

[iii] The Penal Code (Amendment) Act No.16 of 2006⁶¹

The Penal Code Amendment Act was brought in specifically to address issues of human trafficking and incorporates many of the provisions of the Palermo Protocol. *Again, it is insufficiently used to penalize fraudulent recruitment agencies and prosecutions conducted against traffickers have not been made public.*

⁶⁰National Labour Migration Policy 2008, ILO website, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_114003.pdf

⁶¹Penal Code Amendment No 16 of 2006, Sri Lanka Consolidated Acts website, http://www.commonlii.org/lk/legis/num_act/pcal6o2006213/

15. Social security for migrant workers; A Social Protection Floor⁶²

[i] A global campaign of ‘Social Security for All’

“Social protection measures and schemes, taken within a holistic developmental perspective are an investment in overall social and economic development, contributing to poverty reduction, reduction of inequalities, social inclusion and cohesion as well as economic growth”. The Colombo Declaration by UNESCO Forum of Ministers in Charge of the Social Development in the Region, February 2011, Colombo, Sri Lanka

Many developing nations are now considering the far reaching benefits of social security as part of their strategies for development, economic growth and human development. *The ILO Social Security (Minimum Standards) Convention 1952 (C 102)* lays down provisions for medical care, sickness benefits, unemployment benefits, old-age benefits, employment injury benefit, family benefit, maternity benefit, invalidity benefit, survivor’s benefit, standards to be complied with by periodical payments, as well as - *equality of treatment of non-nationals* (Article 68 of the ILO Social Security (Minimum Standards) Convention 1952)⁶³ However, the large gaps in social protection and the inadequacy of measures already in place lead to the initiating of a global dialogue on at least a minimum standard of social protection for all citizens.⁶⁴ The World Commission on the Social Dimension of Globalization (established by the ILO) in 2004 stated that *“a minimum level of social protection needs to be accepted and undisputed as part of the socio-economic floor of the global economy”*.

This concept was further developed as the **Social Protection Floor** initiative which aimed at minimum universal coverage for the global population became part of the ILO campaign for ‘Social Security for All’. The global campaign aimed at universal social security coverage (horizontal dimension) whilst progressively ensuring higher levels of protection (vertical dimensions). *Despite such global initiatives, provisions and dialogue, by 2011 nearly 5.1 billion people, or 75% of the global population, were not covered by adequate social security.*⁶⁵

[ii] Lack of social security for migrant workers

Migrant workers are some of the worst affected by lack of social protection with most migrants lacking access to social security in countries of origin and destination. An example of a relatively successful social security system for workers in Sri Lanka can be illustrated through the **Employees Provident Fund (EPF)** and **Employees Trust Fund (ETF)** which can be used as models in the Maldivian context.

EPF - Under the EPF Act No. 15 of 1958,⁶⁶ an employee is required to contribute a minimum of 8% and the employer a minimum of 12% of the total salary of the employee monthly. The employee’s access to the fund (which grows through investment in various channels) depends on a number of stipulated factors including retirement, marriage or permanent overseas migration.

⁶²Social Protection Floor; for a fair and inclusive globalization, Report of the Advisory Group convened by the ILO in collaboration with the WHO, 2011, http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---ubl/documents/publication/wcms_165750.pdf

⁶³http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102

⁶⁴International Labour Organization, <http://www.ilo.org/secsoc/areas-of-work/policy-development-and-applied-research/social-protection-floor/lang--en/index.htm>

⁶⁵Ibid,

⁶⁶ Employees Provident Fund Act No.15 of 1958, <http://www.epf.lk/Publications/act/Act%20of%201958.pdf>

ETF - The provisions of the ETF Act No.46 of 1980⁶⁷ shall apply to every state and private sector undertaking as specified in an order made by the Minister and published in the Gazette. Employers are required to contribute an amount equal to 3% of the total earnings for each month of an employee in his employ. **Self-employed persons and migrant workers (Sri Lankan migrant workers based abroad) could contribute to the Fund on their own and obtain membership.** Payments of benefits are made to employees upon termination of their contract. However, an employee may not withdraw such monies more than twice in a five year period unless they are able to prove permanent migration abroad.

The Maldives has shown progress in initiating a dialogue on social security with contributions by both employer and employee but implementation lacks transparency, and there are gaps in information and awareness for both employers and employees.

16. Conclusion and Recommendations

At the time this report is being compiled, the Maldives has elected its sixth President Mr. Abdulla Yameen Abdul Gayoom on 16 November 2013. There may therefore be changes to the mandate/functions of some of the institutional stakeholders of the labour migration process. It is to be hoped that with a new, democratically elected government in place, effective, positive and progressive changes will be made for addressing issues of human and labour rights violations faced by migrant workers to the Maldives.

The purpose of this study was to analyse the status of Sri Lankan migrant workers in the Maldives with a focus on the tourism sector. The study discovered that Sri Lankan migrant workers are in fact in a relatively positive position in comparison to other Asian nationalities widely due to; reasonably successful Sri Lankan institutional mechanisms for labour migration, possession of requisite qualifications and experience of Sri Lankan migrant workers, the majority of Sri Lankans being employed in semi-skilled, skilled and professional sectors, and an overall positive reception of Sri Lankan migrants by Maldivian nationals based upon close historical, political and social relations. There is still a need to further regularize labour migration between the two countries through binding agreements, ongoing dialogue and information exchange.

The research discovered however that migrant workers of other nationalities, especially Bangladeshis and Indians in the tourism and construction sectors are subject to human trafficking in the Maldives including - harsh conditions of work, inhumane living conditions, debt bondage, restrictions on freedom of movement, confiscation of travel documents, non-payment of wages within the employment period and charged exorbitant fees and given false employment terms by recruitment agents. The passing of the *Anti-Human Trafficking Bill* in Parliament on 3 November 2013 is a very positive development but its success depends on institutional mechanisms and policies which support and implement the provisions within.

The Maldives at present has no labour migration policy or specialist institution to regulate migrant workers and ensure the protection of their human and labour rights. Mandates for regulating the process has too often been passed between government institutions creating confusion, loss of data and indeed loss of accountability. The mandate for issuing employment quotas, work permits, and residency visas now lies with the Department of Immigration and Emigration, which cannot be expected to undertake initiatives for the protection of the rights and welfare of migrant workers.

⁶⁷Employees Trust Fund Act No.46 of 1980, <http://www.etfb.lk/pdf/ETF%20Act.pdf>

Further, Regulations such as the *Freedom of Peaceful Assembly Act* and the *Regulations Concerning Assembly* restrict workers' Constitutional rights to assembly or strike. Employers in the tourism industry disallow or discourage most forms of trade unionism. Consequent to ratification of the eight fundamental ILO Conventions, the Maldivian government is obliged to bring law and practice in line with the provisions of the Conventions – including the right to collective bargaining which is not specified through legislation at present.

The following are a cross section of recommendations to the governments of the Maldives and Sri Lanka and private sector employers of migrant workers.

[i] Recommendations to the Government of the Maldives;

(1) Formulating, ratifying and implementing laws and policies

- Formulate laws and policies for the regulation of labour migration to the Maldives which establish processes and mechanisms which establish the rights and welfare of regular and irregular migrant workers, undocumented workers, smuggled migrants and trafficked migrant workers. Labour migration policies should guarantee migrant workers the right to work with dignity and without discrimination, should be holistic and applicable to all stakeholders in the migration process.
- Ratify the UN Convention on Migrant Workers and make the necessary amendments to local laws to implement it fully and effectively.
- Provide for the effective implementation of the Bill on Anti-trafficking and People Smuggling through requisite institutional mechanisms.
- Negotiate standard contracts with origin country governments for workers in different sectors and occupational levels which take into account the qualification and skills levels of workers, minimum wage requirements, policies of non-discrimination.
- Strengthen the Immigration Act to take into consideration the current status of incoming labour migration.
- The confiscation of passports and other travel documents of migrant workers should be made unlawful and impose penalties upon those who do so.
- Develop a housing code to be strictly implemented by employers with relation to migrant workers residing in the place of work for the provision of comfortable living standards.
- Protect the right to association, assembly and the right to strike. Amend laws which restrict these rights in any way including but not limited to the *Freedom of Peaceful Public Assembly Act* and the *Regulations Concerning Assembly* and abstain from passing any further laws or policies which infringe upon these rights.
- Formulate comprehensive guidelines for the Department of Immigration and Emigration to identify the different types of irregular migrant workers and then how to deal with their status and direct them to other relevant authorities.

(2) Effective institutional mechanisms

- Establish a separate government institution for the regulation of labour migration which will issue quotas and work permits, maintain statistics, develop and implement policies on labour migration, monitor and report on the labour migration situation, and be the fo-

cal point for migrant workers and overlook their welfare and protection. This institution should work in collaboration with all relevant stakeholders in the migration process.

- Establish a state anti-trafficking task force including but not limited to the Ministry of Foreign Affairs, Ministry of Home Affairs, Department of Immigration, Ministry of Tourism, Labour Relations Authority, Human Rights Commission, Maldivian Police Services.
- Specialist labour officials for carrying out inspections of employment sites to ensure compliance with labour obligations as a member of the ILO.
- Implement a new border control system and a better database to monitor the numbers and movements of migrant workers in order to systematically address issues of irregular migration. Strengthen the Department of Immigration to effectively monitor migration and trafficking.
- Strengthen the LRA through increased budgetary allocations, trainings and wider mandate to address grievance of workers.
- Participate and utilize regional consultative processes to address issues of trafficking and promote inter-governmental cooperation and mechanisms to regulate labour migration.

[3] Raising public awareness

- Raise public awareness regarding trafficking through mainstream and social media.
- Distribution and dissemination of information regarding the laws, policies and institutions relating to labour migration to incoming migrant workers as well as the general public.

[4] Provision of services for victims of trafficking

- Provide shelters and access to welfare services and counseling as well as repatriation measures for migrant workers who are victims of trafficking or assist them to obtain work and be regularized into the formal economy.

[5] Bilateral agreements and dialogue between origin and destination country governments

- Sign bilateral agreements with origin countries which place conditions and obligations upon both countries for the regularization of the migration process and include the human and labour rights of migrant workers.
- Create anti-trafficking dialogue and networks with origin country governments and work out an official mechanism for combating trafficking at both ends.

[6] Improve conditions of arrest and detention for migrant workers

- Detention centers for migrant workers should be maintained to include sanitary and humane living conditions. Migrants in detention should be allowed access to legal assistance and translation services, and court trials should not be unreasonably delayed. Migrant

workers who are arrested should be provided with adequate translation/ interpretation services and access to legal services.

- Policies for the arrest and detention of migrant workers should be transparent and implemented in an impartial and non-discriminatory manner.

[7] Social Security for Migrant Workers

- A social security system which is not a pension should be developed for migrant workers which includes contributions from the employer and employee.

[8] Respect the right to association and assembly

- Recognize existing, registered trade unions and their role in representing the workers as elected union representatives. Respect and recognize the right to assembly and strike and the right to collective bargaining as fundamental rights of the people.

[9] Recognize the importance of working with civil society partners in addressing issues of irregular migration and trafficking.

[10] Other recommendations

- Diversification in the economy for a more vibrant labour market which caters to the needs of a population in a developing country economy.
- Addressing the skills mismatch through education including more public-private partnership programmes such as STEP (Skills Training and Employment Programme) initiated by the tourism industry and the government of the Maldives.

[iii] Recommendations to the Government of Sri Lanka

- Enter into a bilateral agreement with the government of the Maldives which includes the human and labour rights of Sri Lankan migrant workers to the Maldives.
- Utilize regional consultative processes such as the Colombo Process, Abu Dhabi Dialogue and the Global Forum on Migration and Development to advocate inter-governmental mechanisms for regulating labour migration.
- Raise the capacity and awareness of staff of the Sri Lankan High Commission in the Maldives in order to assist migrant workers in distress or direct them to the relevant Maldivian institutions.
- Expand the mandate of the SLBFE Act to include the regulation and monitoring of migrant workers employed by Sri Lankan organizations and employers abroad.
- Expand the compulsory registration with the SLBFE to include Sri Lankans working for Sri Lankan employers abroad.
- Create further awareness to those migrating through direct sources to register with the SLBFE and put in place mechanisms at the point of departure to identify such migrant workers.
- Work with the Maldivian government authorities to identify cases of trafficking and human smuggling and to exchange updated data.
- Amend legislation to register and regulate sub agents/ sub agencies and impose severe

penalties upon all traffickers under the Penal Code (Amendment) Act No. 16. Publicize trafficking cases in an appropriate manner.

- Make the latest data on labour migration available to the public. The latest SLBFE Annual Report is for 2011.
- Gather data from the Sri Lankan immigration authorities to accurately tabulate gender disaggregated data on returnee migrant workers in order to monitor remigration cycles and implement effective reintegration programmes. At present there is no such data publicly available.
- Develop and implement a social security system for migrant workers which include contributions from the employers and employees.
- Cater the pre-departure training programme to include country specific data on the Maldives including labour laws, policies which are applicable to migrant workers as well as information on redress mechanisms and institutions accessible in the host country. At present no such information is being disseminated to migrant workers to the Maldives.
- Effectively implement a holistic return and reintegration programme for migrant workers which address both the social and economic needs of migrant workers and their families.
- Continue to work with other government stakeholders including members of the trafficking task force to ensure the protection of the rights of migrant workers and their families.
- Continue to work with civil society to collaborate and exchange data for the protection of migrant rights.

[iv] Recommendations to Employers

- Develop and implement decent working and living conditions for all workers on resorts, construction sites and other areas of work. This includes, but is not limited to - access to decent accommodation which adheres to economic, social and cultural standards provided in national and international instruments, unlimited access to food and water, sanitation facilities, access to health facilities, insurance, freedom of movement (**refrain from confiscating travel documents**), right to rest and holidays, and all other rights guaranteed to workers under the Constitution of the Maldives, national labour laws and international treaty obligations of the Maldives.
- Develop and maintain strict internal policies of non-discrimination between nationalities and between occupations.
- Ensure that workers are documented and are not victims of trafficking by recruitment agencies and that forced labour conditions which are also constituent of trafficking do not exist in the place of employment.
- Ensure that wages are reviewed and revised in line with rising living costs and paid on a regular basis as per the terms and conditions of contract.
- Develop and implement a transparent system for calculating and informing workers of the total service charges gained each month prior to distributing in a non-discriminatory manner.

- Develop and implement a social security system for migrant workers which is based upon contributions by employer and employee and accessible in full by employees when leaving the country upon completion of employment contract in the Maldives.
- Respect and recognize the rights of employees to freedom of expression, freedom of association – including the right to form or join a trade union, freedom of assembly, right to collective bargaining which are fundamental rights guaranteed under the Maldivian Constitution, labour laws and international labour obligations.

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BIBLIOGRAPHY

Authority, Maldivian Monetary. “*Monthly Economic Review.*” Monthly Economic Review No. 3 February 2013, February 2013.

Baum, T. *International perspectives on women and work in hotels, catering and tourism.* Geneva: International Labour Organization, 2013.

Cain, B.D. Dhivehi (Maldivian); *A Synchronic and Diachronic Study.* New York: Cornell University, 2000.

“Concluding Observations adopted by the Human Rights Committee for the International Covenant on Civil and Political Rights (ICCPR) regarding the Maldives.” 2012.

Department of National Planning. *Annual Statistical Yearbook 2012.* Male: Department of National Planning, 2012.

Department of National Planning. *Annual Statistical Yearbook 2012.* Male: Department of National Planning, 2012.

Department of National Planning. *Household Income and Expenditure Report 2012.* Male: Department of National Planning, 2012.

Dissanayake, J. and Jayaratne, S. *Trade-Poverty Nexus in the Maldives.* Colombo: Institute of Policy Studies, 2008.

Employees Provident Fund Act No.15 of 1958, Sri Lanka

Employees Trust Fund Act No.46 of 1980, Sri Lanka

Freedom of Peaceful Public Assembly Act 1/2013, Maldives

Gunatilaka, R. *Employment Challenges in the Maldives.* Geneva: International Labour Organization, 2013.

Human Rights Commission of the Maldives. *Rapid Assessment of the Situation of Employment in the Maldives 2009.* Male: Human Rights Commission of the Maldives, 2009.

Human Rights Commission of the Maldives. *Shadow Report to the ICCPR 2012.* Male: Human Rights Commission of the Maldives, 2012.

Immigration Act 1/2007, Maldives

Institute of Policy Studies. *Migration, Remittances and Development in South Asia.* New Delhi: Sage Publications, 2011.

Institute of Policy Studies. *Trade in Services in South Asia.* Colombo: Institute of Policy Studies, 2009.

International Labour Organization (ILO). *Labour Migration in South Asia; A review of issues, policies and practices.* Geneva: ILO, 2011.

International Labour Organization. *Social Protection Floor; for a fair and inclusive globalization.* Geneva: ILO, 2011.

International Organization for Migration (IOM). *World Migration Report 2011; Communicating Effectively about Migration .* Geneva: IOM, 2011.

International Organization for Migration (IOM). *World Migration Report 2013; Migrant Well-Being and Development*. Geneva: IOM, 2013.

International Labour Organization. *National Labour Migration Policy 2008- Sri Lanka*. Geneva: ILO, 2008.

Law & Society Trust. *Rights, Remittances and Reintegration: Women Migrant Workers and Returnees in Sri Lanka*. Colombo: Law & Society Trust, 2011.

Law & Society Trust. *State of Human Rights in the Maldives*. Colombo: Law & Society Trust, 2007.

Maldives Department of Immigration and Emigration, Laws & Regulations.

Maldives Ministry of Tourism. *Maldives two years after the Tsunami*. Male: Maldives Ministry of Tourism, 2006.

Maldives Monetary Authority. *Overview of the Maldivian Economy*. Male: Maldives Monetary Authority.

Maldives Tourism Act 2/99, Maldives

Mohamed, N. *Pre-Islamic Maldives*. Maldives: National Center for Linguistic and Historical Research, 2002.

Penal Code (Amendment) Act No.16 of 2006 Sri Lanka

Protocol Against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime.

Regulation governing dispute resolution between the employer and employee, Maldives

Sri Lanka Bureau of Foreign Employment (SLBFE). *Annual Statistical Report 2011*. Colombo: SLBFE, 2011.

Sri Lanka Central Bank. *Annual Report 2012*. Colombo: Sri Lanka Central Bank, 2012.

Studies, Institute of Policy. *State of the Economy 2012; keeping Sri Lanka on the growth expressway*. Colombo: Institute of Policy Studies, 2012.

The Bill Prohibiting Tourism Boycotts, Maldives

The Constitution of the Republic of Maldives 2008, Maldives

The Employment Act 2008, Maldives

The Freedom of Peaceful Public Assembly Act, Maldives

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

The Regulation Concerning Assembly, Maldives

The Sri Lankan Bureau of Foreign Employment Act No. 21 of 1985, Sri Lanka

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons 2000

The World Bank. *Promoting Economic Cooperation in South Asia*. New Delhi: Sage Publications, 2010.

Transparency Maldives. *Daily Lives and Corruption: Public Opinion in the Maldives*. Male: Transparency Maldives, 2011.

UN ESCAP. *Monetary Policy Formulation in Maldives: Constraints caused by domestic and external factors*. Dhaka: UN ESCAP, 2009.

UN Women. UN Women; *Facts and Figures on women, poverty & economics, poverty & employment*. 2013. http://www.unifem.org/gender_issues/women_poverty_economics/facts_figures.html?#2.

US State Department. *Trafficking in Persons Report 2013*. Washington: US State Department, 2013.

World Bank. *Migration and Development Brief 20*. New York: World Bank, 2013.

